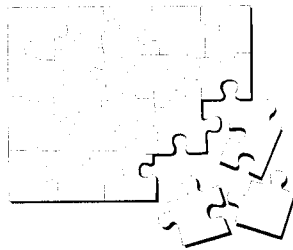
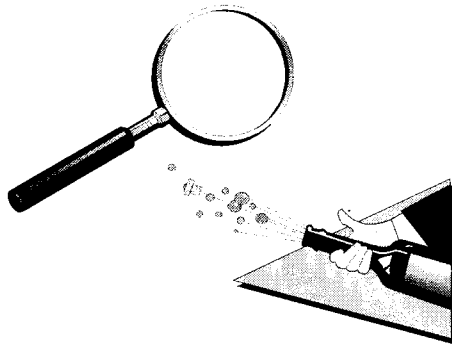


IOWA'S IMPLIED CONSENT LICENSE REVOCATION PROCEDURE

A Manual To Assist Law Enforcement Personnel In Preparing For Effective Enforcement Of Chapter 321J Revocations



**Prepared by the Iowa Department of Justice
Office of the Iowa Attorney General
July 2003-Second Edition**

CONTENTS

About This Manual	Preface
An Overview of OWI and License Revocation in Iowa	Page 1
Preparing for and Testifying at Iowa's Implied Consent Hearing	3
Significant Issues In the OWI Hearing Process	
--Establishing Operation/Investigatory Stop	9
--Accidents	14
--Developing Reasonable Grounds	18
--Field Sobriety Tests	21
--Preliminary Breath Test	24
--OWI Arrest/Statutory Requirements to Proceed With Implied Consent	26
--Implied Consent Advisory	28
--Chemical Tests: Proper Requests, Procedures, and Equipment Use	32
--Chemical Test Refusal	39
--Service of Notice of Revocation	40
--Assistance of Counsel/Rights Under Iowa Code Section 804.20	41
--Zero Tolerance/Alcohol Concentrations Between .02-.10 For Under Age 21 Drivers	45
--Special Requirements for Juveniles	47
--Drivers Under the Influence of Drugs	48
--Commercial Motor Vehicle Operators	50
Attachments and Forms	51

ABOUT THIS MANUAL

This manual is designed to assist law enforcement personnel in preparing for and participating in Iowa's implied consent license revocation process. It is intended to compliment other training manuals and materials which officers may have received from the Iowa Law Enforcement Academy or other academies, county attorneys' offices, or individual law enforcement agencies.

ACKNOWLEDGMENTS

The Department wishes to thank individuals from the office of the Prosecuting Attorneys Training Coordinator, the Iowa Law Enforcement Academy, the Iowa State Patrol, and the Division of Criminalistics Laboratories for information, materials, and input provided for this manual. While these agencies provided assistance, any recommendations within this manual are those of the Department of Justice and may not necessarily reflect the recommendation of any of those agencies.

WHERE TO GO WITH QUESTIONS

There are many resources for peace officers with questions about implied consent and OWI procedures and laws:

Department of Justice, Office of the Attorney General. 515.239.1302. For any questions about this manual or any aspect of the implied consent process.

Department of Transportation, Office of Drivers Services. 515.237.3153. For questions about properly submitting the request and notice (implied consent) form and proper service of the notice.

Iowa Law Enforcement Academy. 515.242.5484. For questions regarding training at the academy, particularly regarding proper administration of field sobriety testing.

County Attorneys Office. Contact your local county attorney's office for information regarding the criminal charges for OWI, any prosecutorial questions, or other procedural matters which the county attorney may have preferences.

Prosecuting Attorneys' Training Coordinator. 515.281.5428. This office assists your county attorney in providing training and materials regarding successful prosecution of OWI cases as well as other criminal matters.

Division of Criminalistics Laboratory. 515.281.3666. For questions about the use or certification of breath testing devices including the PBT, Data Master cdm, or for the results of chemical testing for alcohol, drugs, or combinations of alcohol and other drugs.

AN OVERVIEW OF OWI AND LICENSE REVOCATION IN IOWA

Operating while impaired is a major public safety issue across the country. Nationally, about 18,000 persons are killed each year because of alcohol-related crashes. Approximately 38.4% of all fatal crashes are alcohol-related.

A 1991 Gallup survey indicated that 14% of the respondents reported to have driven while under the influence of alcohol within the last three months. Another estimate indicates the typical intoxicated driver commits the offense about 80 times per year, or once every four or five nights.

Over the past few decades, the number of drunk driving fatalities and injuries has been declining, largely due to increased education, enforcement, and societal changes; however, the numbers are still substantial.

In Iowa, over 100 persons are killed each year in alcohol-related accidents. Alcohol is involved in one-quarter to one-third of all fatality accidents. Around 2,500 persons are injured in Iowa each year due to alcohol-related accidents.

Like nearly every state, Iowa has a two-track system for persons apprehended for operating while intoxicated (OWI). On the one hand, the person faces a criminal charge of operating while intoxicated, which may include, among other things, jail time, fines, and a criminal record. The criminal charge of OWI is handled by the county attorney's office in whichever of the 99 counties the offense was committed.

Iowa Code Chapter 321J covers matters concerning operating while intoxicated. Under Iowa law, it is unlawful to operate a motor vehicle in this state in any of the following conditions:

1. While under the influence of an alcoholic beverage or other drug or a combination of alcohol and another drug.
2. While having an alcohol concentration of .08 or more.
3. While having any amount of a controlled substance in one's body.

In addition to the criminal aspect of OWI, a person arrested for OWI also faces a civil process. This consists of an action by the Iowa Department of Transportation revoking the person's privilege to operate and register motor vehicles. This is referred to as an administrative license revocation because the administrative agency which issues a driver's license (the DOT) is imposing a revocation of the operator's license.

This matter is handled in the administrative license revocation process. The agency issuing the license (DOT) revokes the operating privilege through evidence supplied by a peace officer who certifies that the person was operating a motor vehicle in violation of Iowa Code

section 321J, that the officer had reasonable grounds to believe the offense had been committed, and that the person either refused chemical testing or submitted to a chemical test which indicated an unacceptable level of alcohol and/or drugs.

Implied consent laws assist in removing impaired drivers from the roadways. The law states that any person who operates a motor vehicle anywhere in Iowa in a manner giving reasonable grounds to believe that they are operating in violation of the OWI statute is deemed to have given consent for withdrawal and testing of a specimen to determine the alcohol or drug content in the person's body.

An important difference between the two aspects (criminal and civil) is the burden of proof. The state has the burden of proof in the criminal court system. In the civil or administrative license revocation system, it is the licensee who carries the burden of proof. While the state must prove the person committed the offense of operating while intoxicated in a criminal case, it is the burden of the licensee to, in essence, prove he did not violate the implied consent law in the license revocation process.

Some arrests for OWI may not result in convictions but administrative revocations may still be imposed. Therefore, implied consent laws play an important role in removing impaired drivers from the roadway.

Each year in Iowa, approximately 20,000 persons have their privileges to operate motor vehicles revoked for OWI and another 2,000 persons under age 21 have their licenses revoked for zero tolerance violations. Iowa law also requires the revocation of licenses for persons driving under the influence of illegal drugs and the disqualification of operating privileges for operators of commercial motor vehicles with blood alcohol concentrations of .04 or more.

As peace officers, removing impaired drivers is one of the many critical aspects of protecting the public and ensuring safe roadways. This manual will assist law enforcement officers in ensuring the work done in apprehending impaired drivers results in successful revocation of their privilege to operate motor vehicles, regardless of whether a criminal conviction occurs.

PREPARING FOR AND TESTIFYING AT IOWA'S IMPLIED CONSENT HEARING

Drivers who have their privilege to operate motor vehicles revoked are entitled to request a hearing to determine whether the revocation is proper. The hearing request is handled by the Department of Transportation's Office of Drivers Services. When a request for a hearing is made, that office turns over the hearing request and pertinent information to the Department of Inspections and Appeals' (DIA) Office of Administrative Hearings. DIA administrative law judges (ALJ's) preside over the hearings.

The ALJs' office will send the officer a subpoena commanding you to be present to testify at the administrative hearing. Attached with the subpoena will be instructions on participation.

As soon as possible, please contact the attorney general's office at the telephone numbers provided to indicate that you will be able to participate in the scheduled hearing and provide the telephone number where you can be reached. Please note the hearing on your schedule to ensure you remember to participate. If you fail to appear, it is difficult to win the case.

If you cannot participate at the scheduled time, you need to request a continuance. Continuances are not granted simply to accommodate preferences; you must have a valid conflict which would prevent you from appearing at the scheduled time. Examples of valid continuances include vacation, conflicting court dates, or a training activity. The ALJ will also continue the matter for situations such as a spouse giving birth, funerals, or other unavoidable personal conflicts. Usually the judge will only grant one continuance per side. Therefore, when a future hearing date is determined, please be sure you will be available.

In addition to the subpoena to appear at the hearing, you may be issued a subpoena duces tecum. This subpoena requires you to produce the items listed, to the parties indicated, and by the time frame specified. Sometimes an officer may turn the subpoena over to a records person to obtain the items. While it is fine to have others prepare the items, because the subpoena is issued to the officer, it is ultimately the responsibility of the officer to comply. If you have any questions about complying with the subpoena, contact the attorney general's office at 866.251.5482.

The officer who signs the request for the chemical test portion of the implied consent form is the only officer who will be issued a subpoena. Because that officer must possess the reasonable grounds to have asked for the test, it will be necessary for that person to testify. Other officers may also have been involved in the case however, only one officer is typically asked to testify, particularly if that officer knows all of the facts another officer would testify about.

In some situations, we may want a second officer to verify certain facts. For instance, a situation involving a motor vehicle accident where one officer handles the scene and another only

goes to the hospital may require both officers. If you have any questions about whether to include another officer, please contact the attorney general's office to discuss the case and determine the witness list.

On the day of the hearing, please make yourself available 10-15 minutes prior to the hearing time. A representative of the Iowa Attorney General's Office will call you to discuss the case. The attorney general's staff represents the state department of transportation. The peace officer is being called as a witness for the DOT, therefore, the attorney general's office will be the peace officer's representative at the hearing and will handle all of the legal concerns.

It is important to have a clear telephone connection; cellular telephones can sometimes be a problem if the connection is poor or your power supply begins to dwindle. If you have children or animals at home which cause background noise please cover your handset mouthpiece when not testifying.

Please have available your complete file including all police reports, copies of operational checklists, evidence cards or data master printouts, telephone logs and the like. Defense lawyers may ask you about any range of topics and it is important to be well prepared and have all of the documents which may become an issue. If you were issued a subpoena duces tecum, please make sure you bring a copy of all of those materials as well.

Please remember that the attorney general's staff person has no prior knowledge of the particular case until they contact you to review the matter. The sheer number of OWI cases make it difficult to obtain reports ahead of time. Therefore, please be available prior to the hearing time, have all of the necessary paperwork, and be prepared to discuss the case in detail.

Typically, the attorney general's representative will ask you the following types of questions:

Did you stop the motor vehicle and why?

If not, how did you come in contact with the driver and why do you believe that person was operating?

What observations did you make that led you to believe the driver might be impaired?

Did you give the driver the standard field sobriety tests and what were the results?

Did you administer a preliminary breath test?

Did you place the driver under arrest for OWI?

Did you read the driver the implied consent advisory?

What type of chemical test did you administer?

Was there any problem with the test or the machine?

Did the driver ever ask to speak to anyone such as an attorney or family member before taking or refusing the chemical test?

Telephone hearings are similar to being in court, except that officers are on the telephone instead of being on the stand. An administrative law judge presides and will swear-in the witnesses, who will be examined and cross-examined by counsel or representatives of the state. The hearing is recorded and the judge will issue a written decision within a few weeks.

The evidence presented at implied consent hearings typically revolves around the testimony of the peace officer. Cases are usually won or lost based upon the strength of the peace officer's testimony, which ultimately includes the officer's training, proper use of procedures, accuracy when administering field tests and chemical tests, thorough report writing, and demeanor during examination.

It is important to be prepared for the hearing so that when you are examined, you know your responses without having to pause at length, refer to your notes, or give the appearance that you are unsure of the response.

Although reports cannot contain everything the officer saw or heard, they should be accurate, thorough, and clearly written. Reports which lack specific information or which convey information in a way which is vague are not as helpful. It is not enough to merely observe and recognize symptoms of impaired driving, the officer must also be able to memorialize them accurately and testify about them credibly.

A successful case depends upon the clarity and completeness with which the arresting officer's observation are presented.

Evidence must be clearly conveyed in the formal structured reports and in a narrative arrest report. The preparation of a good report begins in the field. All of the observations an officer makes must be memorialized as soon as possible. Statements the defendant makes can be very important, particularly when they claim to have said something other than what you heard.

While it may seem obvious that the person is impaired on the night in question, your memory may not be so clear after two or three months. Be certain to make complete notes on field sobriety tests, including specific indications of problems throughout the test. It is far better for an officer's credibility if he can tell the judge on what counts the person stepped off the line, at what count they raised their arms, and in how many seconds the person estimated thirty seconds rather than to testify that the person scored two clues on this test and three clues on that test. Specificity is always better than vagueness or generalities. While every description or

minutia of information is certainly not expected or required, the more definite and clear the information, the better.

For instance, instead of writing “the driver appeared intoxicated”, the officer could write: “the driver’s eyes were bloodshot and watery, his speech was slurred, and he had a strong odor of an alcoholic beverage on his breath.”

Some officers use recording devices and video recorders to preserve the information. This is fine; however, given the fact that technology sometimes fails us, be sure to check the tapes as soon as practical to ensure the information was recorded and that it is then transcribed to a report.

Reports should cover all of the important topics: the stop, physical observations, statements made by the defendant, field sobriety tests, PBT, arrest, the request for a chemical test, the result, any information regarding telephone call requests, and any other information that may become important.

Since it is impossible to tell which cases will be challenged at a later time, peace officers must handle each incident as if it will be reviewed and they must take the necessary steps to memorialize all of the important facts and follow the proper procedures.

When testifying, always be impartial, objective, and truthful. Avoid appearing arrogant or subjective. Be courteous to the defense lawyer, regardless of their conduct.

Remember that judges and others may not understand police jargon, therefore, attempt to convey information in plain language, avoiding codes, slang phrases, and military time.

When examining an officer, some defense lawyers will ask a question such as, “Are those all of the reasons you arrested the defendant?” If the peace officer answers in the affirmative, even though there may be more factors, the defense lawyer will attempt to portray the officer as unclear or attempt to limit the evidence. Many peace officers respond to these types of questions with responses such as, “That is all that I recall at this time.”

However, officers should not use these types of responses too frequently, nor should they use them when a point must be clearly made. For instance, when a defense attorney asks, “Did the driver say he wanted to speak to a lawyer?”, the response of, “Not that I recall.” implies the officer may be unsure whether such a request was made. Some issues, such as telephone calls, are so volatile that officers need to make the responses crystal clear. If the officer knows the answer, they should clearly state the response, such as, “At no time did the defendant ask to contact anyone.”

If you do not know the answer to a question, simply say you do not know. Never guess at answers or make statements which might compromise your credibility. You have collected the

evidence and the facts, present them properly and the judge will decide

Try not to deviate from the pertinent facts; do not add testimony which is clearly irrelevant. Listen to the question and respond to what is asked. Sometimes the best answer is a short and direct yes or no, particularly when a defense attorney is examining you. When the state's representative asks questions, you will have a greater opportunity to add relevant facts, particularly facts which the defense has specifically avoided or attempted to manipulate in their favor.

Many defense lawyers will seek to challenge your credentials, observations and interpretations of events, and your credibility. They may ask questions that cast doubt on what you saw, heard, smelled, or said, and by offering other explanations for your observations. They may challenge your training and experience and attempt to show inconsistencies in your testimony.

Do not let these tactics faze you. Simply state the truth and the facts. Don't embellish your training or experience. Never testify as to things you don't know. Always follow the proper procedures, always do the standardized field sobriety tests consistently and as instructed. Always take accurate notes and write quality reports. These things will assist you in maintaining your credibility.

Never argue with defense attorneys. Simply answer the questions. Do not lose your temper, even if the other party is being abusive, badgering, or overbearing. Some attorneys may sound argumentative or may intentionally attempt to anger the peace officer. Regardless of the other party, always be polite and courteous. Do not hedge, play games with, or try to outsmart defense attorneys. Just answer their questions.

Listen carefully to the question. Do not make up anything or guess. If you do not understand the question, say you don't understand. If you do not know the answer, say you don't know. Do not volunteer information. Give short answers if that is what is called for; a simple yes or no is a sufficient answer for many questions. Do not feel you have to justify or explain your conduct, you are not on trial; just answer the question and do not go off on a long explanation or justification.

Do not respond, "yeah" or "uh-huh"; clearly state "yes" or "no". Give positive, definite answers and avoid terms such as, "I think", "I believe", or "sort of like." If you make an incorrect statement, correct it immediately or as soon as possible. When estimating or approximating, be sure to indicate such.

Witnesses may not make objections; counsel for the two sides make objections. If an objection is made, do not answer the question until the judge has made a ruling. Sustaining the objection means the judge agrees with the objection and the question cannot be asked. An overruled objection means the question must be answered. Peace officers should never refuse to

answer any questions when directed to answer by the judge.

After the hearing is concluded, feel free to contact the person who handled the hearing with any questions about what occurred. The ALJ will make a ruling within a few weeks and you will be notified of the outcome. If the department loses a case, the state's representative will determine whether to appeal the matter and the peace officer should be notified of this as well. If you ever have a question as to the disposition of a case, please contact the attorney general's staff at 515.239.1302 or toll-free 866.251.5482.

SUMMARY:

1. Be prepared for the hearing 10-15 minutes prior to the scheduled time and have all necessary reports, documents, and paperwork. Contact the attorney general's office with questions at 866.251.5482.
2. Successful cases depend upon officers following proper procedures, writing thorough reports, and testifying credibly.
3. When testifying, always be truthful and professional.

ESTABLISHING OPERATION/INVESTIGATORY STOP

In order to proceed with implied consent, a peace officer must first have reasonable grounds to believe a person was operating a motor vehicle. Therefore, the first step of the process is determining that a person was operating the vehicle.

Obviously, it is most convenient to actually witness the person driving the vehicle down the roadway. However, many times an operator is not actually stopped while driving nor are there any witnesses to the operation.

In these situations the peace officer must ask questions and gather evidence to develop a reasonable belief the person was operating the vehicle. If the peace officer is able to substantiate a belief that a person was operating, the officer may proceed with implied consent. The standard is whether a reasonable person would believe the offense had been committed. At the time of the administrative hearing, the burden of proof is on the licensee to show they were not the operator.

The Iowa Supreme Court approved a jury instruction which defines “operates” to mean, “the immediate, actual physical control over a motor vehicle that is in motion and/or has its engine running.”

Therefore, under Iowa law, a person is considered an operator of a motor vehicle if the vehicle is in motion or has its engine running.

A motor vehicle is defined as a vehicle which is self-propelled. Besides trucks and automobiles, other motor vehicles include snowmobiles, tractors, golf carts, or any other vehicle which is self-propelled. A driver of any of these vehicles is subject to implied consent and may be arrested for OWI.

Operating a vehicle is not necessarily synonymous with driving. Several court cases have established a person as operating in the following scenarios:

The driver was found behind the steering wheel of a car with the engine running while his companion pushed the car in an attempt to move it from the ditch,

The driver was encountered by police after starting the engine but before moving the vehicle,

The vehicle’s engine running, with the transmission in drive, and the defendant’s foot on the brake,

The driver having one foot on the brake and one foot on the accelerator with the engine running,

The driver was sitting behind the steering wheel with the engine running and the lights on, parked in the middle of a gravel road but not moving, and

The driver was behind the wheel of a car with a burned-out clutch.

A driver is subject to implied consent anywhere in the state of Iowa; they do not have to be on a public highway and cannot be protected by being on private property. As long as the person is operating a vehicle within the state of Iowa, they can be arrested.

Drivers often claim they were not the operator. Even when an officer stops a vehicle that has been in motion, some people will later attempt to claim they switched drivers after the stop. It is important when making contact and when communicating, to ask questions that elicit a statement confirming the person was driving.

Some drivers think that if an officer does not actually see them drive, they cannot be arrested. They certainly can be, but it is important to take the opportunity to elicit a statement from them about when they were driving and whether they consumed any alcohol since they stopping driving.

Some drivers will claim someone else drove, but that person left the scene, or that the driver was a stranger who disappeared. Peace officers should do their best to inquire about the identity of the alleged driver and rule out this possibility.

Some officers, when told that a person, such as the alleged driver's friend, actually drove, have called the friend on the telephone and confirmed they did not actually drive.

It is important to interview all of the passengers in a vehicle to determine who the driver was. It may be best to separate them before interviewing them to ascertain individual responses. Remember to ask clear, unambiguous questions, such as, "Was John Smith driving the vehicle when it went into the ditch?"

Judges tend to give strong weight to what was said to the peace officer on the night in question, rather than what is said at the hearing. Therefore, it is important to ask the relevant questions of all of the available parties, and to memorialize all of the information thoroughly and accurately in the written report.

While some encounters derive from an accident or other situations where the officer does not witness the person driving, most arrests begin with the actual stop of a motor vehicle arising from something improper the officer witnesses.

While the stop can be due to many factors (including a report of problem driving or an incident unrelated to driving such as a domestic dispute) most often the peace officer will stop a motor vehicle which is being driven down the roadway.

Problematic driving is usually the first indicator in the development of the reasonable grounds test.

The Iowa Supreme Court recognizes three reasons for an investigatory stop of a motor vehicle:

1. When an offense is committed in the officer's presence,
2. When the officer has a reasonable cause to believe a crime may have occurred or criminal activity is afoot, and
3. When the officer is performing a legitimate community care-taking function.

When a law enforcement officer sees a traffic offense, however minor, the officer has probable cause to stop the driver of the vehicle. An officer may also stop and briefly detain a person for investigative purposes if the officer has a reasonable cause to believe a crime may have occurred or criminal activity is afoot. The Iowa Supreme Court also recognizes a public safety responsibility to stop a motor vehicle even though no violation of any law has occurred. Examples include defective equipment, an unresponsive occupant slumped behind a wheel, or an improper lane change.

Traffic violations constitute probable cause for a stop. Driving without a seat belt or driving without a license plate are considered traffic violations and are grounds for making a stop.

The standard for an investigatory stop is reasonable and articulable suspicion that criminal activity is or has occurred. An officer may make an investigatory stop if they are able to point to specific and articulable facts, which taken together with rational inferences from those facts, reasonably warrant the intrusion. The principal function of an investigatory stop is to resolve the ambiguity as to whether criminal activity is afoot. However, unparticularized suspicion does not justify an investigatory stop.

The vehicle may have an equipment violation, an expired or missing registration, sticker, or plate; or, most commonly, a moving traffic violation, such as speeding or a seat belt violation. A roadside safety checkpoint which turns-up impaired drivers is legal under Iowa Code chapter 321K, but only if the checkpoint is, in fact, planned and implemented pursuant to the provisions of the chapter.

The following actions may indicate an impaired driver on the roadway:

1. turning with a wide radius

2. straddling the center or lane marker
3. almost striking an object or vehicle
4. weaving
5. driving on other than the designated roadway
6. swerving
7. speed slower than 10mph below limit
8. stopping inappropriately or for no apparent reason
9. following too closely
10. drifting
11. having tires on center or lane marker
12. braking erratically
13. driving into opposing or crossing traffic
14. driving in opposing lanes, wrong way, or one way
15. improper or unsafe lane change
16. slow response to traffic signals
17. signaling inconsistent with driving actions
18. turning abruptly or illegally
19. accelerating or decelerating rapidly
20. driving with headlights off
21. appearing to be impaired: eye fixation, tightly gripping the steering wheel, slouching in the seat, gesturing erratically or obscenely, face close to the windshield, drinking in the vehicle, head protruding from vehicle, etc.

Observe how the driver responds to the signal to stop and how the driver handles the vehicle during the stopping sequence. After activating lights or sirens, the driver may exhibit further indicators of impairment, including:

1. not responding to lights or sirens
2. slow response to lights or sirens
3. abrupt swerving
4. sudden stopping
5. striking the curb or another object
6. problems maintaining a proper lane position
7. braking problems
8. abrupt turning off the roadway
9. parking the vehicle in an improper manner
10. failure to come to a complete stop
11. failure to take the vehicle out of gear
12. driving in opposing lanes
13. attempting to flee/evade
14. furtive movements within the vehicle by the driver or occupants.

An impaired motorcyclist may drift during turns or curves, weave, drive evasively, and

experience problems when turning, such as exhibiting unsteadiness, making sudden corrections, improper leaning angles, and late braking. Once stopped they may have trouble keeping the motorcycle balanced and dismounting properly.

SUMMARY:

1. A person is operating if they are behind the wheel of the vehicle with the engine running.
2. In situations where the engine is not running, ask questions and gather evidence sufficient to place the person behind the wheel when the engine was running or the vehicle was in motion.
3. A peace officer must have a reasonable and articulable suspicion to stop a motor vehicle.

ACCIDENTS

Drivers involved in motor vehicle accidents are subject to implied consent either voluntarily, by warrant, or by order of a physician, if the doctor certifies they are dead, unconscious, or otherwise in a condition rendering them incapable of consent or refusal.

Accidents can present special problems for peace officers in determining whether to invoke implied consent. For instance, no one saw a driver, the suspected driver is not in a condition to provide information or conduct field sobriety tests, the driver is no longer at the location, or the suspected driver is found at another location, such as their residence, but is uncooperative.

Because many accidents are caused by intoxicated drivers and may result in injury or death, it is important for peace officers to conduct a thorough investigation in an attempt to turn an accident situation into a successful OWI and license revocation when the officer can appropriately establish a connection between drinking and driving.

When a driver is still at the scene or has been transported to a hospital, it is important that the peace officer ask questions of the driver, including whether they were driving or who was, the time of the accident, and whether they consumed any alcohol after the accident. Gaining an admission of driving, an approximate time, and ascertaining whether any post-operation consumption of alcohol occurred will assist greatly in developing a successful case. At some hearings, the driver will claim to having consumed alcohol after the accident or testify that someone else had driven, therefore, collecting as much evidence on the date of the incident can be very helpful.

Because officers typically have fewer facts to rely upon in accident situations, all of the potential facts are important in being able to establish reasonable grounds. Make sure to check for alcohol odors, bloodshot eyes, slurred speech and other signs of possible intoxication. Make close contact with the driver and ask them questions if they are able to communicate. If possible, do an HGN test on the subject.

An accident causing injury or death justifies a PBT. However, always look for other factors which may be present.

Do not discount bloodshot eyes, slurred speech, or other observations, statements, or behavior which a driver exhibits after an accident. Note the observations which are consistent with alcohol or drug use. While there may be explanations other than alcohol, or a combination of explanations for these observations or behaviors, the peace officer should consider all factors in determining reasonable grounds.

An accident, in and of itself, may suggest an impaired driver. It is important to note

factors which eliminate other explanations such as weather and road conditions, vehicle problems, or evidence of braking. A witness may be able to describe driving behavior and identify the driver or occupants.

At the administrative hearing, it is not uncommon for the suspect to claim either they were not the operator or that they became intoxicated after driving. Therefore, it is important for the peace officer to ascertain as much information as possible from available persons at the time of the incident.

Ask the suspect if they were driving, when they last drove, whether they consumed any alcoholic beverages or drugs after driving. If they claim someone else was driving, find out specific names, addresses, time frames, where the person went, whether there were any other parties involved. Separate persons if there is more than one occupant and question them separately.

If a person claims they were not the driver, they can still be arrested if the peace officer has a reasonable basis to believe they were the driver. Likewise, if a person claims consumption after driving, the peace officer can still arrest and test the individual if the officer has a reasonable basis to believe they were impaired prior to driving. Ask them what they drank, where they drank, and then look for the containers or other evidence.

For instance, a driver may say he drank two Budweiser beers after the accident; however, the only beer cans in the bed of the truck are Miller Lite which appear old. The lack of any containers is strong evidence the person did not consume alcohol after the accident. Search the general area to counter an argument they threw the containers in the ditch.

In some accident cases few, if any, reports are generated. If an officer is involved in an accident situation, either at the scene or at the hospital, a report should be made which memorializes all of the facts and circumstances which warrant the invocation of implied consent. If other officers or other departments were involved, make sure to obtain their reports prior to the hearing.

It is important to communicate information between agencies, particularly when one department handles the accident scene and another is requested to go to a hospital and request a chemical specimen. Remember, the officer making the request for the chemical test must possess reasonable grounds to ask for such a test. The officer can rely on information another officer shared. The officer should also look for clues of intoxication and ask questions while with the suspected driver.

The peace officer requesting the test will be the person issued a subpoena to testify at the implied consent hearing and must have a reasonable basis to ask for the test. If multiple officers are involved, the requesting officer must get information prior to the test request to establish the subject as an impaired operator. The requesting officer should also make observations of the

subject to determine breath odor and eyes, and attempt to converse with the subject, if possible, to determine speech problems, admissions of driving, and admissions of drinking.

If no one observed the vehicle being operated and no one is admitting driving, the case must be built on circumstantial evidence.

Ownership of the vehicle should be considered as most people drive their own vehicle. Control of the vehicle can include location behind the wheel or possession of keys. The absence of other people in the area or the location of bodies should be noted. Any injuries which are consistent with features of the interior of the vehicle can be strong indicators, such as the presence or absence of chest injuries from a steering wheel, fragments of glass in the scalp, skin or hair, or the presence of skin, hair, or fabric in the windshield. Evidence of immediate prior driving can include a warm hood or engine, warm tires, or tracks in newly fallen snow or wet pavement. Shoe prints may exist on the vehicle foot pedals which could be compared with the suspect's shoes.

At the time of the request, read the implied consent advisory, make a request for specimen, and have the driver sign the form if possible. The driver's signature is not necessary although the peace officer should always sign the form. If the driver is unconscious or otherwise in a condition rendering them incapable of consent or refusal, have the physician certify the special form utilized for such purposes. (See Item C in Attachments and Forms)

After a blood or urine test is collected, the peace officer should not fill-in any more information on the implied consent form after request for specimen which is marked as Section C on the form. (See Item A in Attachments and Forms)

The driver's copy of the top of the form may be given to the driver but do not serve any notice of revocation as the test results are not complete.

When the blood or urine test result is returned to the department, the same officer who requested the test should fill in the appropriate information on the form and certify under penalty of perjury at the proper location on the bottom of the form.

There are two ways in which the notice may now be served; either the peace officer who made the request may personally serve the driver or the peace officer may send the form to the DOT's Office of Drivers Services and the department will handle the service. You may fill-in the section for service of the notice of revocation if you personally serve the driver, but do not fill-in this section if you want the DOT to provide service.

Collecting a sample by using a search warrant is not a part of implied consent. Special rules and forms apply in those cases. If a warrant appears appropriate, the officer may wish to contact the local county attorney for consultation and assistance. Advance planning between the county attorney and the law enforcement agency is an appropriate way to prepare for such

situations.

SUMMARY:

1. Since accidents often diminish typical evidence gathering, it is important to take extra steps to determine if sufficient evidence of operation and intoxication exists for implied consent.
2. Ask the suspected driver and any witnesses who was driving, when the accident occurred, and whether any alcohol was consumed after driving.
3. When a blood or urine test is taken, hold the implied consent paperwork until the test results become available.

DEVELOPING REASONABLE GROUNDS

To proceed with implied consent, a peace officer must have reasonable grounds to believe the person operated a motor vehicle in violation of the statute.

What determines reasonable grounds has been developed over time by the case law, which has indicated that the reasonable grounds test is met when the facts and circumstances known to the officer at the time he is required to act would warrant a prudent person in believing the offense had been committed.

When a peace officer believes someone may be impaired, they need to continue to add all of the facts leading to that belief together until the time the officer must make a decision to invoke implied consent.

This begins with the driving and stop sequence, which was previously discussed, and continues forward from that point. The totality of the circumstances must be considered when judging an officer's decision on whether to invoke implied consent, including driving problems, admissions and statements, physical observations, physical evidence, and field sobriety tests.

The officer should be asking: when I approach the vehicle, what do I see? When I talk to the driver, what do I see, smell, and hear? How does the driver respond to my questions?

Based upon information from this face-to-face encounter, the officer may decide to request the driver to perform field sobriety tests. When the driver exits the vehicle, the officer should note how the person exits and walks.

Many indicators of impairment will be evident through sensory observations made by the peace officer, including:

Sight observations:

- bloodshot eyes
- dilated pupils
- flushed face, abnormal skin coloration
- reaction to light
- soiled clothing
- fumbling fingers for license, registration, insurance
- alcohol containers
- drugs or drug paraphernalia
- bruises, bumps, scratches
- unusual actions or attitude, sleepy or combative

Sound:

- slurred speech, slow or thick tongued
- incoherent speech
- admission of drinking
- inconsistent responses
- abusive or profane language
- unusual statements
- repetitive questions or answers
- slow responses
- differing responses or incorrect information

Smell:

- odor of alcoholic beverage
- odor of marijuana
- unusual odors
- cover-up odors such as breath spray
- vomit or belching
- urination or defecation in clothes

In addition to observations, officers may ask the driver questions which intentionally challenge their ability to respond appropriately. For instance, asking for two or more things simultaneously such as a driver's license, registration, and proof of insurance and failing to get them all. Asking interrupting or distracting questions, such as "where were you coming from" while they are looking for their proof of insurance, may cause an impaired person to forget what you originally asked of them. Asking unusual questions may illicit incorrect answers. For instance, if you ask the driver's middle name and they tell you their first name, or if you ask their date and year of birth and they give you the month and date instead.

How the driver exits the vehicle may provide additional facts for reasonable grounds. Note if the driver cannot open the door, has trouble with a window, leaves the vehicle in gear, climbs out, stumbles, staggers, or falls, or leans on the vehicle or otherwise uses the vehicle for balance.

Based upon initial observations and statements made, the peace officer should then proceed to the administration of field sobriety tests, which will also be used as a basis for reasonable grounds. (Field sobriety tests are covered in the next section.)

Evidence gathering for reasonable grounds continues after the arrest and before the request for the specimen. The driver may make unsolicited statements on the way to the law center (although it is important not to interrogate an offender unless they have been Mirandized),

or they may cry, sing, throw themselves around the backseat, vomit, urinate, defecate, or make inappropriate or odd comments or threatening statements. Upon arrival at the law center, the offender may exhibit problems with balance, such as falling into corridor hallways or doors, and may need assistance walking.

SUMMARY

1. Reasonable grounds exist when the facts and circumstances known to the officer at the time he is required to act would warrant a prudent person to believe the offense had been committed.
2. Reasonable grounds is not one particular fact but all of the information the officer possesses, taken together. It includes driving problems, the driver's physical appearance, behavior, statements and admissions, and performance on any field sobriety tests. All of these factors may be considered up to the point of requesting a chemical test.
3. Always memorialize all of the information in your reports.

FIELD SOBRIETY TESTS

Field sobriety tests are a valuable tool in assisting a peace officer in determining whether a motor vehicle operator may be impaired due to alcohol or drugs. When properly administered and interpreted by a certified officer, they are a highly reliable tool for evaluating potential OWI drivers.

While there are many field tests which can be utilized, three particular tests are considered “standardized field sobriety tests,” a battery of tests administered and evaluated in a standardized manner to obtain validated indicators of impairment based on National Highway Traffic Safety Administration research.

These tests include the Horizontal Gaze Nystagmus (HGN), Walk and Turn (WT) and One-Leg Stand (OLS). These three were chosen because they are highly reliable indicators of impairment. The WT and OLS are relatively simple for sober drivers to complete correctly, and apply the concept of divided attention, which makes the test difficult to complete correctly for individuals under the influence of alcohol or drugs.

In order for the tests to be the most reliable, they should be administered as instructed by the Iowa Law Enforcement Academy. The complete Academy instructions are attached as Item F in Attachments and Forms for reference.

Horizontal Gaze Nystagmus Test

Nystagmus is an involuntary jerking of the eyes. Horizontal gaze nystagmus refers to an involuntary jerking of the eyes occurring as the eyes gaze to the side. In addition to being involuntary, the jerking is also unconscious. The person experiencing the nystagmus normally is unaware that the jerking is happening and is powerless to stop or control it.

With individuals under the influence of alcohol, the involuntary jerking of the eyes becomes much more pronounced and readily noticeable. As a person becomes more intoxicated, the onset of the nystagmus, or jerking, occurs after fewer degrees of lateral deviation, and the jerking at more extreme angles becomes more distinct.

The HGN is the most accurate of the standardized field sobriety tests and when used in combination with the other two standardized tests, will reliably disclose whether or not an OWI suspect’s alcohol concentration is .08 or greater.

The horizontal gaze nystagmus has three clues for each eye for a total of six clues. Four or more clues is considered a failing score. The clues are as follows:

1. Lack of smooth pursuit

2. Nystagmus onset prior to 45 degrees
3. Nystagmus at maximum deviation.

It is recommended that the HGN test be administered first. It is the most reliable test and is the easiest to administer. It can be done even when the weather or the road conditions are poor. The driver is more likely to consent and do the test if they are just standing and looking rather than walking and giving responses. If they begin balance tests and have obvious problems, they may be unwilling to continue other tests. Conducting the HGN first ensures the best chance of obtaining results from the most reliable test.

There are other categories of nystagmus but they will not influence the HGN test if the test is administered properly. These include optokinetic nystagmus and vestibular nystagmus which includes rotational nystagmus, post-rotational nystagmus, caloric nystagmus, and positional alcohol nystagmus.

Physiological nystagmus is a natural nystagmus but generally too small to be seen with the naked eye. A properly administered HGN test will not be affected by physiological nystagmus. Nystagmus can be caused by some pathological disorders such as brain tumors or other brain diseases, however person suffering from these disorders are rarely able to drive.

Prior to passage of the .08 legislation, ILEA training indicated the failure on the HGN test to be 77% accurate to indicate an alcohol concentration of over the legal limit. The Walk and Turn test was considered 68% accurate and the One Leg Stand test 65% accurate. A combined HGN and the Walk and Turn tests was considered 80% accurate.

Please note that new certification of the SFST have been made for the .08 BAC level. ILEA provides training which indicates that when all three tests are administered and the person exhibits failing scores, the likelihood is 93% that the person is at or over the .08 BAC level.

Walk and Turn Test

The walk and turn test has eight clues as follows, and two or more is considered a failing score:

1. Loss of balance during the instruction
2. Starting too soon
3. Stopping while walking
4. Failure to touch heel-to-toe
5. Stepping off the line
6. Using arms for balance
7. Losing balance on the turn or turning incorrectly
8. Taking the wrong number of steps

One Leg Stand Test

The one leg stand test has four clues as follows, and two or more is considered a failing score:

1. Swaying while balancing
2. Using arms for balance
3. Hopping during the test
4. Putting the foot down

Other field tests which are commonly utilized and which can assist in determining whether a peace officer has reasonable grounds to invoke implied consent include:

1. Reciting the alphabet.
2. Counting backwards.
3. Finger count.
4. Rhomberg/Modified Rhomberg.

Be sure to conduct these or other tests in accordance with your training.

Some tests can be completed while the driver is still in the car. If poor weather conditions exist, do an HGN test in the patrol car. Other field sobriety tests can be done at the law center prior to invoking the implied consent.

A driver has no obligation to perform the field sobriety tests. However, if a person refuses testing, the peace officer may still invoke implied consent and/or arrest the driver if the officer has reasonable grounds to believe the driver violated the law. While field tests are preferable, without them the peace officer can proceed based upon other factors such as an odor of alcohol, slurred speech, and driving problems.

SUMMARY:

1. The standardized field sobriety tests (SFST) include the horizontal gaze nystagmus, walk and turn, and one leg stand tests.
2. The SFST's should always be administered and scored in the appropriate manner. (See Item F in Attachments and Forms for SFST training material.)
3. Other field tests can also be utilized and relied upon by an officer in developing reasonable grounds.

PRELIMINARY BREATH TEST

Iowa law permits the use of a preliminary breath test (PBT) when an officer has reasonable grounds to believe a motor vehicle operator may be committing or has committed the offense of OWI or when the operator has been involved in a motor vehicle collision resulting in personal injury or death.

Iowa law also permits a PBT to be used for the purpose of deciding whether to arrest a suspect. However, a PBT should never be the sole factor in the decision to arrest. It should be used to confirm what information the officer has already gathered. The law states that the result of the PBT may be used in determining whether a chemical test should be requested and in determining what type of test to administer but may not be used in any court action.

The PBT can help to corroborate all other evidence and to confirm the officer's judgment as to whether the suspect is impaired. While the PBT result cannot be introduced at a criminal court trial, it may be considered at an administrative hearing. Whether or not the person submitted to a chemical test and whether the result was over the level of .08 BAC is always admissible. In addition, the administrative judge may allow the results of the PBT, pending any objections and depending upon the issues raised.

While many officers may consider the PBT as a field sobriety test, some judges may not consider the PBT as inclusive with field tests. Therefore, if an officer asks a subject to submit to field sobriety tests and the subject refuses, it is preferable to then specifically ask the subject to submit to a PBT. This removes any question about the subject's consent or refusal to submit to a PBT.

As indicated previously, because the administrative law judge may consider the PBT invalid as evidence in the implied consent hearing, we recommend that the subject be arrested for OWI after the PBT and that the subject be specifically told they are under arrest for OWI. This ensures that requirements for a proper implied consent test exist, regardless of whether the PBT is ultimately considered.

The PBT can also be used as an indicator to help determine whether illegal drugs may be involved. If a subject appears impaired but tests .00 or well below .08 on the PBT, the officer may want to consider whether controlled substances are involved.

Always instruct the subject on the method to provide a proper PBT sample. If it appears the subject failed to provide a proper sample as instructed, indicate such in the police report.

Iowa Administrative Code section 661-7.5(2)(321J) requires a record be kept of each calibration of PBT units. All devices are to be calibrated and the required items recorded, at least once per month. Some administrative law judges may disregard the PBT if the log is not

complete. If the PBT is disregarded, the case will be lost if there is not an arrest for OWI or some other qualifying factor. It is important that PBT logs are utilized and completely filled out as required.

Attached as Item B in Attachments and Forms is a PBT calibration log which can be utilized to comply with these requirements.

SUMMARY:

1. A preliminary breath test (PBT) can be used to assist in determining whether to make an arrest or proceed with implied consent, but the test should never be the sole basis to proceed.
2. PBT units should be calibrated on a monthly basis and a complete log should be maintained for each unit. (See Item B in Attachments and Forms)
3. Only one PBT is required.

OWI ARREST/STATUTORY REQUIREMENTS TO PROCEED WITH IMPLIED CONSENT

After considering all of the information, the peace officer must decide whether to arrest the individual. The standard upon which this decision must be made is called probable cause to make an arrest. This standard is established by the constitutions of the United States and Iowa, by statute, and by case law. Iowa law permits peace officer to make arrests without a warrant for a public offense committed or attempted in the peace officer's presence; or where a public offense has been committed and the peace officer has probable cause for believing that the person to be arrested has committed the offense.

Consensual completion of a drug recognition examination following an arrest for a different offense does not constitute an arrest for OWI.

Only peace officers with special training who meet the definition of Iowa Code section 321J.1 can invoke implied consent. An officer without the required training may arrest a driver for OWI, but then a certified officer must make their own independent assessment of intoxication for the implied consent to be valid.

If an uncertified officer makes the arrest, a certified officer need not re-arrest, but must develop independent reasonable grounds before invoking implied consent. The certified officer must make their own observations (odor, eyes, etc.), and conduct their own FSTs.

To avoid potential problems, we recommend that if an uncertified officer encounters someone they believe to be impaired, that officer should then contact their agency to arrange for a certified officer to arrive and conduct the investigation, field testing, arrest, and implied consent process.

There are no jurisdictional issues regarding invocation of implied consent. If the officer is a properly certified peace officer in the state of Iowa, the officer can invoke implied consent anywhere within the state.

Statutory Requirements for Implied Consent

In order to make a request for a chemical test under the implied consent law, the peace officer must have reasonable grounds to believe that the person was operating a motor vehicle in violation of section 321J and at least one of the following conditions must exist:

- a. A peace officer has lawfully placed the person under arrest for violation of section 321J.2.
- b. The person has been involved in a motor vehicle accident or collision resulting in personal injury or death.

- c. The person has refused to take a preliminary breath screening test provided by this chapter.
- d. The preliminary breath screening test was administered and it indicated an alcohol concentration equal to or in excess of the level prohibited by section 321J.2
- e. The preliminary breath screening test was administered to a person operating a commercial motor vehicle as defined in section 321.1 and it indicated an alcohol concentration of 0.04 or more.
- f. The preliminary breath screening test was administered and it indicated an alcohol concentration less than the level prohibited by section 321J.2, and the peace officer has reasonable grounds to believe that the person was under the influence of a controlled substance, a drug other than alcohol, or a combination of alcohol and another drug.
- g. The preliminary breath screening test was administered and it indicated an alcohol concentration of .02 or more but less than .08 and the person is under the age of twenty-one.

An officer must have at least one of the above but can have more. Because the PBT result may be considered invalid, we recommend that officer's record all of the conditions which permit invocation of implied consent, including an arrest for OWI if appropriate. If an arrest is made, the officer should specifically inform the person they are under arrest for OWI.

SUMMARY:

1. The peace officer requesting the chemical test must be a "peace officer" as defined in Iowa Code section 321J
2. In order to proceed with implied consent, at least one of the above seven requirements must be met.
3. Record all of the seven conditions which exist, including an arrest for OWI if appropriate.

IMPLIED CONSENT ADVISORY

Prior to requesting a chemical test the peace officer must advise the person of what is referred to as the implied consent advisory. The advisory is derived from Iowa Code section 321J.8 and is contained in a packet of forms used to request the specimen (see Item A in attachments and forms). The advisory states:

“The Implied Consent Law requires that a peace officer advise the person of the following:

1. Refusal to submit to the withdrawal of a body specimen for chemical testing will result in the revocation of your privilege to operate a motor vehicle for one year if you have not previously been revoked within the previous twelve years under the implied consent or drunk driving laws of this state, or for two years if you have one or more revocations within the previous twelve years. If you are under age 18, the revocation will be for the above periods, or until you reach the age 18, whichever is longer.
2. Refusal to submit to a blood or urine test for drugs other than alcohol or a combination of alcohol and another drug constitutes a refusal and the above mentioned revocation periods apply.
3. If you consent to chemical testing and the test results indicate an alcohol concentration of eight hundredths or more, or if the test results indicated the presence of a controlled substance or other drug or a combination of alcohol and another drug in violation of 321J.2, the department shall revoke your privilege to operate a motor vehicle for a period of 180 days if you have no revocation within the previous twelve years under the drunk driving or implied consent law, or for one year if you have one or more previous revocations under those provisions. If you are under age 18, the revocation will be for the above periods, or until you reach age 18, whichever is longer. If you are under age 21 and the test results indicate an alcohol concentration of two hundredths (.02) but less than eight hundredths (.08), your license will be revoked for 60 days if you have no previous revocations under Iowa Code Chapter 321J within the previous twelve years or 90 days if you have a previous revocation under Iowa Code Chapter 321J within the previous twelve years.”

Operators of commercial motor vehicles have an additional advisory which can be found in the section on Commercial Motor Vehicle Operators.

The request for the chemical specimen must be in writing. Reading the implied consent advisory fulfills the requirement that the request be in writing. Actual delivery of the written demand is not strictly required by the statute, but if a person requests to read the advisory they

must be given a copy.

While it is preferable to have the driver sign the form, it is not required. Refusal to sign is not by itself considered a refusal to take the test. Officers should still ask the subject whether they are consenting to or refusing the test.

It is the driver's verbal consent or refusal that is binding. If they do not wish to sign, simply skip the driver signature line and complete the rest of the form. An officer may write, "refused to sign" in the driver signature space. The peace officer should sign the form as well. If you forget, sign it as soon as possible after the request.

It is not necessary to read the request when a physician has certified the driver as a being considered dead, unconscious, or otherwise in a condition rendering them incapable of consent or refusal.

When reading the implied consent advisory do not add or subtract any information. Read the advisory verbatim from the form. If the person is interrupting or appears to be ignoring the statement just continue to read the advisory in its entirety. It is mandatory that an officer read the advisory, it is not mandatory for the driver to listen.

Be careful not to specify a length of the revocation if you do not know whether a prior revocation exists.

Never tell a driver under age 21 that the revocation will only be an .02 violation of 60 or 90 days. If the under age 21 driver takes the test and the result is over .08, they will be required to be revoked for the longer period. Similarly, if a driver under age 21 refuses the test, they would be subject to the longer period of revocation. Under either situation, the under age 21 driver may be subject to a OWI criminal charge.

Peace officers are only required to read the implied consent advisory. They are not required to inform drivers about work permits, interlock devices, fines, or to give any other information. Be careful not to give advice to a driver.

Drivers may have prior convictions, deferred judgments, or suspensions on their driving record. None of these are considered a previous revocation. Convictions and deferred judgments are criminal matters which do not affect the administrative revocation. If a conviction carries with it a revocation, that will be noted as a revocation on the DOT license record. Out-of-state convictions for OWI do not apply as these are recorded as suspensions, not revocations.

The statute requires you to revoke the driver's license for the enhanced or longer period if a person has a previous revocation under the chapter within the previous 12 years. When examining a driving record, do not count convictions but only revocations. The county attorney will consider prior conviction history when determine whether to file criminal charges.

Previous .02/zero tolerance revocations count as a prior revocation. Therefore, if a driver has a prior revocation for .02/zero tolerance, they should be revoked for the longer period for the current offense.

If you are unsure about the period of revocation, serve the driver with the notice of revocation for the lesser period and the DOT's Office of Driver's Services will later amend the notice if their records indicate an enhanced period is required. In any case, be sure you read the implied consent advisory in its entirety, and always refer to those periods of revocation if the driver has questions.

Revocation Periods

Revocation and disqualification periods are as follows:

1. Zero tolerance-Alcohol concentrations between .02-.08 for under age 21 drivers:

- 60 days: first offense test result
- 90 days: second or subsequent test result
- one year: first offense test refusal
- two years: second or subsequent test refusal

2. OWI

- 180 days: first offense test result over .08
- one year: second or subsequent test result over .08
- one year: first offense test refusal
- two years: second or subsequent test refusal

3. Under age 18

- above OWI periods or until 18th birthday, whichever is the greater period

4. Disqualification for commercial motor vehicle operators

- one year: any test refusal or test result over .04
- three years: any test refusal or result over .04 with a vehicle transporting hazardous materials which requires vehicle placarding
- lifetime disqualification: any previous OWI, disqualification, test refusal, failure to stop and render aid at the scene of an accident, felony, or aggravated misdemeanor.

SUMMARY:

1. Always read the implied consent advisory in its entirety, regardless of the age of the driver or whether the driver is interrupting or appears to be ignoring the statement.
2. Do not deviate, add, or subtract information from the advisory.
3. Do not interpret the advisory or otherwise give the driver legal advice.

CHEMICAL TESTS: PROPER REQUESTS, PROCEDURES, AND EQUIPMENT USE

After the implied consent advisory has been read, the peace officer must make the request for the chemical test. Always read the language on the form which states, "Having read to you the appropriate Implied Consent Advisory, I hereby request a specimen of your [blood] [breath] [urine] for chemical testing to determine the alcohol or drug content." Indicate the date and time on the form and sign the form as the officer requesting the test.

Ask the driver to either consent to or refuse the test, mark the appropriate box, and sign the form. If the driver will not check a box or sign the form, simply continue with the testing procedure. Refusal to sign the form is not considered a refusal to take the test. A verbal consent or refusal is sufficient. The officer may write, "refused to sign" in the space for the driver's signature.

If the peace officer is requesting blood and the driver refuses, the peace officer must offer an alternate specimen or there is no refusal. Use the second portion of section "C" on the form entitled, "Request For Alternate Specimen", which states, "Withdrawal of a blood specimen having been refused, I hereby request a specimen of your [breath] [urine] for chemical testing to determine the alcohol or drug content." Again, indicate the date and time on the form.

If drugs are suspected, or if the driver tests under the legal limit on a breath test but the officer believes drugs are involved, use the third portion of section "C" on the form entitled, "Request For A Specimen For Drugs", which states, "Having reasonable grounds to believe that you are under the influence of a drug other than alcohol or a combination of alcohol and another drug, I hereby request a [blood] [urine] specimen for chemical testing." Fill in the date and time of the request and ask the driver to sign the form.

Two-hour time period

Iowa law provides that the results of a chemical test performed within two hours after operation are presumed to be the same as those which would apply at the time of operation. This means that as long as a test is administered within that two-hour window, the presumption is that the driver was at that level when operating.

For the purposes of implied consent, the peace officer is merely required to offer a chemical test within two-hours of the time of either a PBT test, PBT refusal, or an arrest for OWI, whichever of the three occurred first. The chemical test must be offered within two hours, it does not have to be received within two hours.

However, since alcohol can dissipate rather rapidly, it is always desirable to obtain a test as soon as practical.

Peace officers should always offer the chemical test before the two-hour time period expires. In the criminal process, there is a presumption that any test administered within two hours of operation is considered the driver's BAC at the time of operation.

When faced with a situation where the two-hour period is in jeopardy, make sure the request is made within two hours. For instance, when someone wants to talk to an attorney, the officer may request the specimen before the telephone call and then wait for the driver's decision until the conclusion of the telephone conversation.

If the peace officer fails to offer a test within two hours of the PBT/arrest time, the subject is not required to submit to testing and a refusal to test will not result in a revocation.

Write the time of the request for the test on the implied consent form, not the time the test is administered. The test time can be placed on the evidence card and checklist, or it will automatically be printed on a Data Master cdm ticket.

The two-hour period does not apply to a test when the driver was involved in a motor vehicle collision which resulted in personal injury or death unless a PBT or arrest has triggered the two-hour rule.

Chemical Test Options

There are three types of body specimens which peace officers may request of a driver: blood, breath, and urine.

The choice of which chemical test to offer is that of the peace officer. However, if the officer requests a blood test, the driver may refuse that test without revocation. In that situation, the officer is required to ask for one of the other two chemical tests and the driver must submit to that test or it will be considered a refusal.

The driver may not place conditions on the taking of the test or the test type. Officers are not required to give more than one test and do not have to repeat any tests at the request of the driver. However, drivers do have a right to an independent chemical test if requested.

The Data Master cdm is the only instrument in use in Iowa for the purpose of evidentiary chemical breath testing.

Data Master cdm

Officers must be certified on using the device and then must follow the instructions (found in Item F under Attachments and Forms). Begin by entering information before testing, including the driver's name and other information. The Data Master conducts an internal

calibration of the instrument before use. An operational checklist is required to be filled out by the peace officer while conducting the test.

When “please blow” appears, the driver has approximately two minutes to produce a sample. Instruct the subject as follows, “Place your mouth on the mouthpiece and blow long and steady into the tube until I tell you to stop.”

Once the subject starts to blow through the breath tube, the instrument’s beeping tone will change to a steady tone which indicates that the instrument is receiving an adequate breath flow. You may tell the subject to stop blowing when you hear a single beep. If an acceptable sample is not provided within the allotted time, the instrument will display, “Subject Refuse? <Y/N>”. Type “N” for “No” and restart the sequence. Type “Y” for “Yes” if the subject is refusing and the instrument will print that the test was refused.

If the machine accepts the sample as adequate it will print the result on the tickets. The device will test the same sample twice and give two printouts.

If the machine does not accept the test as valid, it may print one of several other readings.

Invalid sample can mean the instrument detected mouth alcohol. If this occurs, the subject should be retested after a short wait.

Interference will occur when the instrument detects a chemical substance other than ethanol such as acetone, methanol, or isopropyl. If this occurs, conduct another test.

In some instances, the subject may be blowing but the device is not completing a result. In these instances, the officer may use the “N.V.” or “sample override” key which allows the operator to interrupt and override the normal sample criteria of the instrument and force acceptance of the test results as of the time it is pressed. Any test result obtained using this method will result in a lower than actual subject test unless the subject is alcohol free.

If a second test is given for any reason, always make sure to replace the mouthpiece with a new one.

Always check the datamaster printout to ensure the readings are accurate and within acceptable levels. If you notice a problem attempt another test or ask for a different chemical specimen, such as a urine test.

The machine will store the results of every test and the information will be downloaded to the DCI crime lab in Des Moines. If you lose the print out ticket, the test result can be obtained by contacting the DCI.

Margin of Error

The Department of Public Safety, Division of Criminal Investigations Laboratory has determined plus or minus .004 or five percent (whichever is greater) is the margin of error for chemical testing on approved devices.

Using the laboratory's standard, the Department of Transportation will only revoke a driver for a test failure at the following levels:

- a. For an OWI, the test result must be .085 or greater,
- b. For a zero tolerance/.02 violation the test result must be .024 or greater, and
- c. For a commercial motor vehicle disqualification, the test result must be .044 or greater.

If a subject's test is below .085 and the person is age 21 or under, the driver may be revoked for a .02 violation instead of an OWI revocation.

Do not subtract the margin of error yourself when entering a test result on any form, always place the actual test number on any forms or paperwork.

Testifying on the Accuracy of the Instrument

Peace officers are not expected to provide scientific or technical testimony on the workings of any chemical testing devices. The only real concern is that the officer is certified to administer tests on the instrument and that the officer conducted any procedural aspects of the test as instructed. If a particular officer has more knowledge about the workings of the device, they can answer any questions asked. Also, officers may be asked general questions as to their experience with the devices and any problems they have experienced.

Instrument Malfunctions

If a breath testing instrument malfunctions or indicates some error, the peace officer should ask for a different substance for chemical testing: either a blood or urine test. The driver must consent to this sample or it is considered a refusal, unless the sample was blood, and then the officer should proceed to request the urine specimen, a refusal of which would constitute a chemical test refusal.

Ask the driver to sign again for the alternate substance, either on a new form or on the same form with clear indications of the new substance requested.

If the breath test machine is malfunctioning, often times officers will ask consent of the driver to test on another machine. If the person agrees, this is acceptable and they can be tested on the alternate machine. However, if they refuse, the officer must then ask for a different

chemical substance.

Incapable of Consent

Iowa law allows for a chemical test when the driver is dead, unconscious, or otherwise in a condition rendering the person incapable of consent or refusal. This provision in the law is most often utilized following a motor vehicle accident when a driver is taken to a medical treatment facility.

If the peace officer believes the person to be in this condition, the officer should consult with a physician.

The peace officer can forego the written request for a specimen (reading the implied consent advisory and obtaining a verbal consent or refusal) in cases where a physician certifies the person to be either dead, unconscious, or otherwise incapable. A specific form should be used to obtain the doctor's certification (See Item C in Attachments and Forms)

While it is best to receive the written certification by the physician prior to removal of the specimen, it is possible to receive oral certification, as long as the form is completed within a reasonable period of time. If the officer forgets to have the written certification done prior to withdrawal of the specimen, it should be completed as soon as the oversight is discovered.

The decision on whether or not to take a test is always that of the driver if they are capable. In cases where the person is deemed incapable, the decision is that of the physician. A spouse, parent, or attorney cannot make a decision for an incapable driver. If they are attempting to refuse the test for the driver, they should be ignored and the physician's certification used as the basis to withdraw the sample.

A driver may be awake or conscious and still be deemed incapable. Ask the doctor for a medical opinion and if the doctor believes the person to be in a condition rendering them incapable, then have the doctor certify this on the form.

The doctor may ask for either blood or urine to be taken. The appropriate hospital personnel must draw the sample of blood. Make sure that the person drawing the blood is qualified to do so and then properly seal, mark, and process the blood or urine with the DCI laboratory.

Urine Testing Procedure

Urine collection procedures are outlined in Iowa Administrative Code section 661-7.3 and 4(321J) and are as follows:

“As soon as practicable after arrest, the subject should provide the sample by being required to urinate into a bottle, cup, or other suitable container which is clean, dry, and free from any visible contamination.

It is not necessary that the bladder be completely emptied. Later samples may be taken if desired, but are not necessary.

The collection shall be made in the presence of a peace officer or other reliable person under the supervision of a peace officer. The peace officer or other person in the presence of the subject shall be of the same gender as the subject.

Upon collection, a peace officer shall cause the sample to be sealed within a clean, dry container. The container shall be free of visible contamination. If the blood alcohol kit of any manufacturer is utilized for the preservation of a urine sample, the anticoagulant and antibacterial substances in that kit do not constitute visible contamination. The peace officer shall cause a tag or other device to be attached to the container showing the date and time the sample was collected and identifying the arresting officer, the subject, the collecting officer and the person present during the collection of the sample, if other than the collecting officer.

Any sample of urine or blood may be submitted to the department’s criminalistics laboratory or other appropriate laboratory via ordinary mail or hand deliver.”

Blood Testing Procedure

Blood test procedures are similar to urine requirements and are found in Iowa Code section 321J.11.

“Only a licensed physician, licensed physician assistant as defined in section 148C.1, medical technologist, or registered nurse, acting at the request of a peace officer, may withdraw a specimen of blood for the purpose of determining the alcohol concentration or the presence of a controlled substance or other drug. Only new equipment kept under strictly sanitary and sterile conditions shall be used for drawing blood.”

As with urine, the blood test kit should be properly sealed, and marked with a tag or other device listing the date and time the sample was collected, the officer’s name, the driver’s name, and the collecting person’s name. Blood test can also be hand delivered or mailed to the DCI laboratory for testing, or may be tested at another appropriate laboratory.

Independent Chemical Tests

A person may have an independent chemical test or tests administered at the person's own expense in addition to any administered at the direction of the peace officer. The failure or inability of the person to obtain an independent chemical test or tests does not preclude the admission of the evidence of the results of the test or tests administered by the peace officer in an administrative hearing.

The person cannot demand the independent test be done before the officer's requested test or that the State pay for the test, or place any other type of condition upon the taking of the chemical test which the peace officer requests. The person is not entitled to an independent chemical test until they have consented and provided the test requested by the peace officer. Any independent tests shall be done at the expense of the driver.

If a driver is insisting on an independent test or wants a test other than the type the peace officer is requesting, the officer should make it clear that the person may have their test taken as an independent test after they submit to the test the officer is requesting. The officer should make it clear that if they refuse to take the test being requested, they will be revoked for a test refusal.

A peace officer is not required to inform the person of their right to an independent test. However, a peace officer must afford a person a reasonable opportunity to obtain an independent test when requested, and the officer may not frustrate a person's attempt to make arrangement for such a test. Whether the officer's response to a request is reasonable or not is determined on a case by case basis.

SUMMARY:

1. The choice of the chemical test is that of the peace officer. The driver cannot place any conditions on the taking of the test nor can the driver select the test, except for refusing a blood test which will require the officer to offer another type of test.
2. The request for the chemical test must be made within two hours of any PBT, PBT refusal, or OWI arrest unless the driver was involved in an accident resulting in personal injury or death and there is no PBT, PBT refusal, or arrest for OWI..
3. Always check the test instrument printouts to ensure proper readings, if there is a problem or the instrument malfunctions, request a different test.
4. If the driver is incapable of consent, have a physician certify the proper form (See Item C in Attachments and Forms).

CHEMICAL TEST REFUSAL

Iowa law provides that a refusal to submit to a chemical test of urine or breath is deemed a refusal to submit to chemical testing. However, a refusal to submit to a chemical test for blood is not deemed to be a refusal to submit. In that case, the peace officer shall determine which one of the other two substances shall be tested and shall offer that test. A refusal of either of the other two substances is deemed a refusal to submit to chemical testing and the person's license should then be revoked.

A person can indicate they consent to take the test but still be considered to have refused if the driver becomes combative and resistive. For instance, the Court has held that a motorist who originally consented but then threw the form at the officer and said, "kiss my ass" was considered to have refused.

In cases involving death or "injury reasonably likely to cause death" where a driver refuses to provide a specimen for testing, the refusal can be overcome by a search warrant.

Refusing to sign the implied consent form regarding consenting or refusing the chemical test is not considered a refusal to submit to chemical testing. If a driver refuses to sign the form, ask them if they are consenting or refusing to take the test. A driver may refuse to sign the form but still consent to the testing. It is the driver's verbal consent or refusal that is binding.

As indicated earlier, the driver cannot place conditions on the taking of the test. They must give an unequivocal consent to the test or it may be considered a refusal.

We recommend that you warn the driver that you will be considering their actions a refusal if they do not agree to take the test. This gives them one final opportunity to consent.

SUMMARY:

1. A refusal to sign the form is not a refusal to take the chemical test.
2. If the person will not consent to the test, it is considered a refusal. Any response other than an unequivocal consent to take the test may be considered a refusal.
3. A driver cannot be revoked for a blood test refusal. Always offer either urine or breath if the person refuses blood.

SERVICE OF NOTICE OF REVOCATION

In order for a revocation to become effective, it must be served upon the driver. Iowa law allows service of the revocation in two ways: personal service by the peace officer who requested the chemical test, or service by the DOT's Office of Drivers Services.

In most breath test result and refusal cases, a revocation may be served immediately by the peace officer. The officer must physically hand the driver the form and tell them the revocation period. This action constitutes service. The forms may then be placed with the person's belongings if they are being incarcerated. If the peace officer is certifying the form they must physically serve the notice.

Other forms must be served along with the revocation. These include forms for a temporary restricted license, an explanation of Iowa Code Chapter 321J, and the driver's rights under that section, which includes information on requesting an administrative hearing.

If the peace officer serves the notice on the driver, the officer should take any Iowa license or permit in the driver's possession and issue a temporary license valid for ten days. Do not confiscate out of state driver's licenses. The driver may continue to drive on that temporary permit for the ten day period. The revocation will then take place unless the driver asks for a hearing. If a request for a hearing is made, the driver will be issued an order which stays (or delays) the revocation pending the outcome of the administrative hearing. However, Iowa law does not authorize stay orders for zero tolerance/.02 violations or for disqualifications of commercial motor vehicles. While these drivers are entitled to a hearing, they are not permitted to drive after the ten-day period.

The last line on the implied consent form asks the peace officer to "certify under penalty of perjury that the above is true and correct." The peace officer who made the request for the chemical test should be the peace officer who signs this line. That officer should also be the officer who serves any immediate notice of revocation. In cases where a sample is being tested by the DCI and the results are pending, the officer who made the request should be the officer who certifies the form after the results become available. If service of the notice is not possible in these or other instances, do not fill-in the section regarding the personal service of the notice of revocation, but rather, send the form to the DOT's Office of Driver's Services and they will handle the service of the notice of revocation.

SUMMARY:

1. After the chemical test, read the notice of revocation to the driver and hand them the actual revocation form.
2. If unable to personally serve the driver, send the form to the DOT's Office of Driver's Services and they will serve the driver.

ASSISTANCE OF COUNSEL/RIGHTS UNDER IOWA CODE SECTION 804.20

Iowa Code section 804.20 creates a statutory right to consult with an attorney or a family member or both after arrest and before submitting or refusing the chemical test. More implied consent cases are lost because of a violation of this statute than for any other reason.

This right includes a right to consult regarding whether to take a chemical test and is triggered by a defendant's request.

The right attaches after the person is placed under arrest. Field sobriety tests or PBT's do not constitute an arrest and drivers have no right to make telephone calls prior to arrest. However, if a person requests counsel or a phone call at any time, make such available as soon as practical after arrival at the place of detention and before requiring the person to consent or refuse the chemical test.

If a particular attorney cannot be reached, ask the person if there is anyone else they wish to call. This blanket offer to contact someone else helps assure that the driver was given every opportunity to contact someone before deciding to consent or refuse.

Memorialize this information in your reports to ensure a record is made of the officer's attempts at assisting the driver in securing a telephone call. It is also advisable to write into report that no telephone calls were requested. This can be of assistance at a later time, when the driver may claim they asked for calls and were denied the use of the telephone. If you have written into your report that the driver at no time requested any calls, it can be very helpful in refuting their argument.

The decision on whether or not to take the test is solely the driver's. If an attorney or family member speaks to an officer and tells him the person will take or refuse the test, the officer must still ask the person and do whatever the person wants, regardless of the driver's age.

The officer is not required to tell the person of their right to consult with an attorney or family member. However, do not tell the driver that no such right exists or prevent the driver from contacting such persons if a request to make the call is made.

The driver must be given a reasonable opportunity to consult with an attorney. What is reasonable is determined by the judge on a case by case basis. However, an officer should not unreasonably cut off a person's attempts to consult with counsel.

The officer must act reasonably when a request is made, and this may include allowing more than one phone conversation with an attorney or family member or both, as long as the additional conversations do not place in jeopardy the two-hour period for requesting a chemical test.

There are many court cases which provide guidance on the issue of telephone calls. In one such case, the defendant spoke with an attorney who said he would check into the case and call back. The officer refused to wait and deemed the defendant to have refused testing. The attorney called back within ten minutes. One hour remained in the two hour period. The court deemed this a denial of the right to counsel.

However, there is no right to repeated conversations when they might jeopardize the two-hour period. In another case, after a twenty minute telephone conversation, defendant insisted on speaking to his attorney in person. The attorney was forty miles away and the officer would not wait. The court found that this was not a denial of his right to counsel.

How long an officer waits on allowing telephone calls is officer discretion based upon the individual situation. Use your best judgement but we recommend you err on the side of more calls or more time to prevent legal problems later.

Procedurally, the peace officer can place the call if the person is impaired. The driver does not have the right to place the call, although the officer may allow them to dial the numbers if they choose.

In one court case where the defendant supplied the name and number of an attorney but objected to the peace officer placing the call, the court found it was not a violation of defendant's right to counsel for only the officer to place the call.

The right for telephone calls exists up to the point of actually providing or refusing the specimen. If the driver consents to the test and then asks to contact a lawyer, the officer must still provide them the call.

There is no requirement that an officer allow a driver to call anyone other than an attorney or family member. However, if the person requests to call someone other than an attorney or family member, the officer may not simply refuse the request without explanation. In those instances, the officer is required to advise the driver for what purposes and to whom a call is permitted under section 804.20. If the individual still wishes to place a call to a person permitted under the statute, the officer must allow the call.

If the person speaks to a lawyer and then wants to contact a family member, they must be allowed that call as well. The law states the driver has a right to contact an attorney, family member, or both.

In some instances the parties may attempt to delay the test by continuing to talk for an extended period of time. It is important for the peace officer to provide the driver a reasonable opportunity for advice. While there is no set time frame for how long the calls can last, the peace officer may want to interrupt the driver and indicate that a decision is needed and indicate that they have five or ten more minutes to decide. We recommend the officer give the driver several

such warnings before stopping the contact, and then memorialize each of these warnings by noting the time and the content of the discussion.

In addition to telephone calls, the driver also has a right to see and consult privately at the law center with their attorney. This must be permitted but cannot interfere with the taking of the test within the two-hour period.

If the driver indicates their attorney wishes to come to the law center, the officer should inquire as to how long it will take the attorney to arrive. If the time frame is short enough and acceptable to the officer, the officer may inform the driver that the decision can be delayed based upon the agreed-upon time frame for the attorneys arrival. If the time frame is unacceptably long, allow the driver and attorney to continue the current conversation. The attorney can be advised that if they cannot arrive within that time frame, they should contact the department.

Subjects do not have a right to contact anyone prior to an arrest for OWI. Officer are not required to allow drivers to use cellular phones while at the scene. The law states the person has a right to make telephone calls once they arrive at the place of detention but the officer may allow the calls at their discretion.

Sometimes officers attempt to make arrangements with the driver for the vehicle to be removed without having it towed. Some defense attorneys will argue that if the driver indicates a family member or other person can take possession of the vehicle, that this constitutes an invocation of the driver's right to an attorney. Be sure that if the driver indicates they want to contact someone, they are allowed to make telephone calls.

Miranda Warning

Miranda warning are not required prior to implied consent.

To be admissible in court, a defendant's statements must be made voluntarily, that is, without coercion. A warning informing a suspect of his constitutional rights is required when the suspect is in custody and before interrogation.

However, Miranda warnings are not required prior to general on-the-scene questioning of suspects following traffic stops as they do not constitute "custodial interrogation." Nor is it a violation of a person's right to counsel under Miranda to ask a person arrested for operating while intoxicated to perform field sobriety test.

Regardless of whether a person is in custody, voluntary statements are admissible. In addition, officers are allowed to obtain basic identifying information without administering Miranda warnings.

SUMMARY:

1. Every driver has a right to speak to an attorney, a family member or both before taking or refusing a chemical test.
2. A peace officer does not need to inform the driver of such a right, but when the driver raises such a right, the peace officer cannot refuse the contact.
3. Always make a record of telephone calls and times.
4. Always note in your report when no calls are requested to memorialize no such requests were made.
5. The decision on whether or not to submit to chemical testing is always that of the driver, not the attorney or family member.
6. An arrestee does not have two hours to make telephone calls or to decide on taking a test. The peace officer must give the driver a “reasonable opportunity” to make such contact.

ZERO TOLERANCE/ALCOHOL CONCENTRATIONS BETWEEN .02-.08 FOR UNDER AGE 21 DRIVERS

Approximately 2,000 drivers under the age of 21 have their licenses revoked each year in Iowa for operating a motor vehicle with an alcohol concentration between .02-.08.

Young people are a special target for traffic safety. While being less experienced drivers many are also beginning to experiment with alcohol or other drugs. The results can be tragic. The under age 25 group represents just 16% of licensed drivers in Iowa but account for nearly 30% of all alcohol-related fatalities and injuries. Over the next 10 years, statistics indicate that approximately 400 persons under the age of 25 will die in Iowa due to alcohol-related accidents.

Iowa Code section 312J.2A provides for administrative revocation for persons under age 21 who operate a motor vehicle with an alcohol concentration greater than .02 but less than .08. There is no criminal charge or criminal history for .02 revocations.

Iowa law provides the license will be revoked for sixty days for a first test failure and ninety days for all subsequent .02 failures. If the under age 21 driver refuses testing, the revocations are the same as for any age driver: one year for a first offense, two years for all subsequent offenses.

Revocations for both .02 and .08 count as prior revocations when determining whether the offense is a first or subsequent revocation under the chapter.

Peace officers who encounter an under age 21 driver they believe may have been drinking should treat that driver like they are of legal age because you can not be sure at what level they will ultimately test. Always make note of the observations and conduct the standardized field sobriety tests and PBT.

A peace officer still needs reasonable grounds for under age 21 drivers. Typically this can be arrived at with less information than a normal OWI. The mere odor of alcohol or an admission by the under age driver that they consumed alcohol can be a sufficient basis to ask for a chemical test.

However, it is important to investigate under age drivers in the same manner as others because the peace officer cannot know whether the person will submit to a chemical test or, if they do consent, what the test result will read.

There have been some instances where an under age driver submits to a PBT which is under .08, but when they submit to a chemical test, the result is over the legal limit. At that point, the driver should be revoked for a .08 violation and can be charged with OWI. However, if the peace officer has neglected to administer standardized testing and gather other evidence,

the case could be weakened.

Always complete a report on under age 21 drivers which can be used as a basis for later testimony.

Typically with an under 21 age driver who submits to a PBT between .02-.08, the driver will not be arrested at the scene. Because the PBT is the only statutory occurrence utilized to request the chemical test (remember the seven possible options in the section on Arrests/Statutory Requirements), it is imperative that a properly completed PBT log exist. Make sure your department's PBT units are calibrated at least once per month and that all of the necessary information is recorded. (See the form in section B in Attachments and Forms)

SUMMARY:

1. Always treat the zero tolerance driver as if they may have a BAC of .08 or more.
2. Previous .02 revocations count in enhancing any other revocation.
3. Make sure PBT's are properly calibrated and logged.

SPECIAL REQUIREMENTS FOR JUVENILES

A juvenile is a person under the age of 18. Iowa law provides certain requirements be met for persons under the age of 18 who are arrested or taken into custody by a peace officer.

Iowa Code section 232.11 provides that a child shall have the right to be represented by counsel from the time the person is taken into custody for any alleged delinquent act that constitutes a serious or aggravated misdemeanor or felony.

When taking a child into custody or after an arrest, the peace officer must make an attempt to contact the child's parent, guardian, or custodian and inform the child about their right to speak to an attorney.

While peace officers are not required to advise adults of their rights to consultation with an attorney and/or family member prior to testing, a child must be told about their right to be represented. To best comply with this law, we recommend that before any implied consent process, the peace officer read the Miranda warning to the child and attempt to contact an adult responsible for the child.

If the child wishes to contact an attorney, they must be allowed the same rights as an adult. If the parent, guardian, or custodian cannot be reached, the child must still make a decision on whether to consent or refuse the chemical test.

The decision to consent or refuse the chemical test is always the decision of the driver. If a parent says they are not allowing a test, the officer must still ask and get the decision from the juvenile. If the juvenile refuses to make a decision, it should be considered a test refusal. If the parent is insistent on submission to a test, the juvenile must still make the ultimate decision. Parents are not required to sign the request and notice form, only the driver need sign.

Although a zero tolerance violation is not a criminal offense and does not necessitate an arrest, we recommend always contacting the parent, guardian, or custodian and advising the juvenile of their right to counsel, because zero tolerance may still be construed as "taking into custody" and the peace officer can not know what the result of a chemical test may ultimately be: if the result is over the legal limit of .08, an arrest may still be made.

SUMMARY:

1. A peace officer must advise the juvenile of their right to counsel and attempt to contact their parent, guardian, or custodian prior to asking for a chemical test.
2. If such persons are not available, the juvenile must still make a decision.

DRIVERS UNDER THE INFLUENCE OF DRUGS

When a peace officer has reasonable grounds to believe a person has been operating a motor vehicle under the influence of drugs or a combination of alcohol and another drug, implied consent may be invoked.

Developing reasonable grounds for drugs is no different than alcohol - an officer still must have an articulable basis to believe the offense has been committed.

A driver may be using both alcohol and drugs, and therefore, some of the traditional alcohol indicators may be present. Some drivers use drugs only and they may have some of the same types of impairment indicators as well as many which are more exclusive to drug use.

Drug use indicators include the odor of marijuana or the presence of paraphernalia, such as pipes, bong, one-hitters, clips, rolling papers, baggies, and seeds. Always inquire whether the driver has been using drugs as an admission can be part of the reasonable grounds determination.

Passengers can also provide information about drugs or paraphernalia in the vehicle or about whether the driver has been using drugs. The officer may wish to separate the driver and any passengers to make inquiries.

It is becoming more common for peace officers to have some basic training in the detection of drug-related offenses. Additionally, there are more officers who have become certified as Drug Recognition Experts (DRE).

If you suspect drug use record all of the observations and information which cause the suspicion and contact a DRE for assistance. As these examinations may take some time, be sure to have them completed without interfering with the two-hour period for which a chemical test must be requested. If no DRE is available, proceed with chemical testing.

The peace officer may ask for a chemical breath test if alcohol and drugs are both involved or may ask only for a urine test.

If a chemical breath test is given and the alcohol level is below the legal level and the officer suspects the driver is under the influence of drugs or a combination of alcohol and another drug, then a urine sample may be requested.

Officers have the right to seek urine as the sample to be tested even if breath testing is available. Officer should not ask for a blood test for drug testing purposes, the DCI lab prefers urine tests.

The DOT will revoke a person's operating privileges for any detectable amount of a

controlled substance. Drug testing is similar to .02/zero tolerance in that it is not necessary to show impairment, only that the driver has the controlled substance in the sample. Because controlled substances are illegal, having any amount in the body constitutes a basis for revocation.

The DCI Criminalistics Laboratory's testing procedure for urine is to conduct a test for alcohol along with an "initial screen" for the presence of drugs. The first report issued will include an alcohol test result and the results of the initial screen for drugs. This report will state that a final toxicology report will follow to confirm the drug screen. Make sure to wait until this final report is issued to fill-out the revocation paperwork which is sent to the Office of Driver's Services. (Samples of these reports are included as Item D in Attachments and Forms)

SUMMARY:

1. A peace officer must be able to articulate what reasonable grounds existed to believe the operator was under the influence of drugs.
2. If available, utilize a drug recognition expert to examine the driver.
3. Before filling in the bottom of the implied consent form, wait for the DCI laboratories final toxicology report.

COMMERCIAL MOTOR VEHICLE OPERATORS

Operators of commercial motor vehicles should be read the implied consent advisory (see the above section "Implied Consent Advisory") as well as the "Additional Implied Consent Advisory For Commercial Motor Vehicle Operators Only", which states:

"If you are operating a commercial motor vehicle and you submit to chemical testing and the test results indicate an alcohol concentration of four hundredths or more OR if you refuse to submit to chemical testing, you shall be disqualified from operating a commercial motor vehicle for one year.

The disqualification from operating a commercial motor vehicle shall be for three years instead of one year if you are operating a commercial motor vehicle transporting hazardous material of a type or quantity requiring vehicle placarding.

The disqualification shall be for life instead of the periods above if you previously committed any of the following acts or offenses in any state or foreign jurisdiction while operating a commercial motor vehicle after June 30, 1990: (a) operating while under the influence of an alcoholic beverage or other drug or controlled substance or a combination of such substances, (b) operating with an alcoholic concentration of four hundredths or more; (c) refusal to submit to required chemical testing; (d) failure to stop and render aid at the scene of an accident involving your vehicle; (e) a felony or aggravated misdemeanor. The lifetime disqualification may be reduced to 10 years as provided by Federal law."

With CMV operators, the peace officer must be able to articulate a reasonable basis that the statute has been violated. Officers should always treat suspected .04 offenders the same as regular OWI cases, collecting all the evidence and administering all the field sobriety tests, because the officer cannot know what the test result will ultimately be or if the person will refuse.

SUMMARY:

1. In addition to the standard implied consent advisory, the peace officer must read the "Additional Implied Consent Advisory For Commercial Motor Vehicle Operators Only" before requesting a chemical test.
2. A peace officer must have a reasonable basis to believe the driver is over .04 BAC.

ATTACHMENTS AND FORMS

- A. Request and Notice Form and Materials
- B. PBT (Preliminary Breath Test) Calibration Log
- C. Physician's Certification For Driver Dead, Unconscious,
or Otherwise Incapable of Consent or Refusal
- D. Sample DCI Drug Test Forms
- E. Operational Manual For Data Master cdm Chemical Breath Testing Instrument
- F. Standardized Field Sobriety Test Instructions from ILEA.

A. REQUEST AND NOTICE FORM AND MATERIALS



Iowa Department of Transportation

Office of Driver Services
Park Fair Mall 100 Euclid Avenue
P.O. Box 9204
Des Moines, IA 50306-9204

Form 432013 06-03 H-3303

Request and Notice Under Iowa Code Chapter 321J/Section 321.208

Motor Vehicle Accident <input type="checkbox"/> Yes <input type="checkbox"/> No		Operating Commercial Motor Vehicle (CMV) <input type="checkbox"/> Yes <input type="checkbox"/> No		Hazardous Mtrl. Placarding Required <input type="checkbox"/> Yes <input type="checkbox"/> No		Ticket or Case No.	
County of Occurrence		Date of Occurrence		Time of Arrest or Preliminary Breath Test or PBT Refusal (whichever first) <input type="checkbox"/> AM <input type="checkbox"/> PM		Enforcement Agency	
Name (Last, First, Middle)				Date of Birth		Driver License No. State	
Residence Address		City State Zip		Lic. Class		Endorsements(s) Restriction Code(s)	
<p>B On the above date of occurrence, there existed reasonable grounds to believe the above named person was operating a motor vehicle in violation of Iowa Code Section 321J.2, 321J.2A, or was operating a Commercial Motor Vehicle (CMV) with an alcohol concentration of 0.04 or more and the person</p> <p><input type="checkbox"/> submitted to a preliminary breath screening test (PBT) which indicated an alcohol concentration of eight hundredths (0.08) or more.</p> <p><input type="checkbox"/> was under age 21 and submitted to a PBT which indicated an alcohol concentration of two hundredths (0.02) but less than 0.08.</p> <p><input type="checkbox"/> was operating a CMV and submitted to a PBT which indicated an alcohol concentration of four hundredths (0.04) or more.</p> <p><input type="checkbox"/> refused to submit to a PBT under Iowa Code Section 321J.5.</p> <p><input type="checkbox"/> was involved in a motor vehicle accident or collision resulting in personal injury or death.</p> <p><input type="checkbox"/> was placed under arrest for violation of Iowa Code Section 321J.2.</p> <p><input type="checkbox"/> submitted to a PBT which indicated an alcohol concentration of less than eight hundredths (0.08) and the peace officer had reasonable grounds to believe that the person was under the influence of a drug other than alcohol or a combination of alcohol and another drug.</p>							
<p>C REQUEST FOR SPECIMEN: Having read to you the appropriate Implied Consent Advisory, I hereby request a specimen of your <input type="checkbox"/> blood <input type="checkbox"/> breath <input type="checkbox"/> urine for chemical testing to determine the alcohol or drug content. Date: _____ Time of request: _____ <input type="checkbox"/> AM <input type="checkbox"/> PM</p> <p>REQUEST FOR ALTERNATE SPECIMEN: Withdrawal of a blood specimen having been refused, I hereby request a specimen of your <input type="checkbox"/> breath <input type="checkbox"/> urine for chemical testing to determine the alcohol or drug content. Date: _____ Time of request: _____ <input type="checkbox"/> AM <input type="checkbox"/> PM</p> <p>Having been read the Implied Consent Advisory, I <input type="checkbox"/> consent <input type="checkbox"/> refuse to submit to the withdrawal of the specimen(s) requested. Signature of Driver X (If driver refuses to sign, indicate "refused to sign")</p> <p>REQUEST FOR A SPECIMEN FOR DRUGS: Having reasonable grounds to believe that you are under the influence of a drug other than alcohol or a combination of alcohol and another drug, I hereby request a <input type="checkbox"/> blood <input type="checkbox"/> urine specimen for chemical testing. Date: _____ Time of request: _____ <input type="checkbox"/> AM <input type="checkbox"/> PM</p> <p>Having been read the Implied Consent Advisory, I <input type="checkbox"/> consent <input type="checkbox"/> refuse to submit to the withdrawal of the specimen(s) requested. Signature of Driver X (If driver refuses to sign, indicate "refused to sign")</p> <p>Signature of Peace Officer Making Request X</p>							

<p>D The person (operator): (Check all that apply. At least one box must be checked.)</p> <p><input type="checkbox"/> submitted to chemical testing which indicated the presence of a controlled substance or other drug, or a combination of alcohol and another drug in violation of 321J.2.</p> <p><input type="checkbox"/> was under age 21 and submitted to chemical testing which indicated an alcohol concentration of two hundredths (0.02) but less than eight hundredths (0.08).</p> <p><input type="checkbox"/> submitted to chemical testing which indicated an alcohol concentration of eight hundredths (0.08) or more.</p> <p><input type="checkbox"/> was operating a commercial motor vehicle (CMV) and submitted to chemical testing which indicated an alcohol concentration of four hundredths (0.04) or more.</p> <p><input type="checkbox"/> refused to submit to chemical testing.</p> <p><input type="checkbox"/> refused to submit to chemical testing for drugs other than alcohol or a combination of alcohol and another drug.</p>	<p>Alcohol Test Result: _____</p>	<p>Drug Test Result: _____</p>
---	--	---------------------------------------

E NOTICE OF REVOCATION:

Effective ten days from the date of this notice, your privilege to operate motor vehicles in Iowa is revoked pursuant to Iowa Code Chapter 321J for a period of: ☐ Test Result 1st 60 days ☐ Test Result 2nd or subsequent 90 days

Test Result 1st ☐ 180 days 2nd or subseq. ☐ one year ☐ until 18th birthday (if longer)

Test Refusal 1st ☐ one year 2nd or subseq. ☐ two years ☐ until 18th birthday (if longer) and shall remain revoked until you post proof of financial responsibility as required by Iowa Code Chapter 321A. Also, effective ten days from the date of this notice, your privilege to register motor vehicles in Iowa is suspended pursuant to Chapter 321A and shall remain suspended until you post proof of financial responsibility with the department. You are ordered to send or deliver all your plates and registration certificates to the address at the top of this form. For revocations under 321J.2A, registration privileges are NOT suspended and you are not required to file proof of financial responsibility.

In addition to revocation of your motor vehicle license or non-resident operating privilege, the Department of Transportation also orders you to satisfactorily complete the following:

1. A course for drinking drivers (12 hrs.), as provided in section 321J.22 of the Code; 2. Evaluation and treatment or rehabilitation services.

NOTICE OF DISQUALIFICATION: Effective thirty days from the date of this notice, you are disqualified from operating a commercial motor vehicle in Iowa pursuant to Iowa Code §321.208 for a period of: ☐ 1 year ☐ 3 years ☐ Life.

TEMPORARY LICENSE: You are required by law to surrender to the undersigned peace officer all Iowa driver licenses or permits in your possession. This entire notice ☐ is valid as a temporary license for ten days from the date of this notice.

☐ is not valid as a temporary license. Reason _____

I personally served a copy of this notice of revocation/disqualification along with form 432018, "Request for Temporary Restricted License (Work Permit) or Hearing" and form 432019, "Operation of Iowa Code Chapter 321J, Section 321.208 and Your Rights" to the above named person.

Dated this _____ day of _____, _____ year _____ Signature of Peace Officer Serving Notice _____

F I certify under penalty of perjury and pursuant to the laws of the state of Iowa that the preceding is true and correct.

Date	Signature	Badge or I.D. No.
------	-----------	-------------------

OFFICE OF DRIVER SERVICES

REVISED INSTRUCTIONS FOR REQUEST AND NOTICE FORM

All previous forms are obsolete and shall not be used. When processing a commercial motor vehicle operator, use this form and read both advisories.

IMPORTANT

Please press hard using a ball point pen. You are making an original and five copies, all of which must be legible. Determine the correct address of the driver.

Note: Request an alternate specimen if a blood test is requested and refused.

SERVICE OF NOTICE OF REVOCATION AND/OR DISQUALIFICATION

To serve notice of revocation to the driver, you must serve:

1. Driver copy of Form 432013, "Request and Notice Under Iowa Code Chapter 321J/Section 321.208"
- and 2. Form 432018, "Request for a Temporary Restricted License (Work Permit) or Hearing"
- and 3. Form 432019, "Operation of Iowa Code Chapter 321J, Section 321.208 and Your Rights".
- and 4. Form 430100, "Application For Temporary Restricted License".

These forms are parts 5, 6, 7 and 8 of the set. If you are serving a person under age 21 for testing 0.02 but less than 0.08, give the driver the "Driver's Copy" of Form 432013, Form 432018 and Form 432019 only.

NOTE: Failure to serve these forms may result in the revocation or disqualification being rescinded.

ISSUANCE OF TEMPORARY LICENSES

The temporary license must be issued when both of the following conditions are met:

1. A notice of revocation or disqualification is being served for test results or test refusal
- and 2. A **valid Iowa*** driver license is being confiscated.

NOTE: Refusal to submit to chemical testing is not grounds for denying the issuance of a temporary license.

The temporary license cannot be issued if:

1. Test results are not available (*usually blood or urine*)
- or 2. The driver does not possess a **valid Iowa*** driver license
- or 3. The Iowa license is not surrendered.

* Out-of-state driver licenses cannot be confiscated nor is a temporary license issued to an out-of-state driver.

TEST RESULTS ARE NOT AVAILABLE

If the test results are not immediately available, **DO NOT** confiscate the Iowa driver license or complete any portion of the form below the signature of the driver. Rather, tear the driver copy (Part 5) along the perforation and give the top half to the driver. Do not give the driver Form 432018, 432019, and 430100 (parts 6, 7 and 8). Retain all other copies until a test result is received, then complete balance of form, with exception of revocation or disqualification notice and temporary license information, and distribute balance of forms as indicated. Office of Driver Services will then serve revocation or disqualification notice and Forms 432018, 432019, and 430100. **NOTE**, if you are processing a person under age 21 for a test of 0.02 but less than 0.08, the county attorney forms may be destroyed unless the person is charged with a criminal violation related to the incident. Toxicology reports containing drug test results must be sent to the Office of Driver Services.

IMPLIED CONSENT ADVISORY

The Implied Consent Law requires that a peace officer advise the person of the following:

Refusal to submit to the withdrawal of a body specimen for chemical testing will result in revocation of your privilege to operate a motor vehicle for one year if you have not previously been revoked within the previous twelve years under the implied consent or drunk driving laws of this state or two years if you have one or more revocations within the previous twelve years. If you are under age 18, the revocation will be for the above periods, or until you reach age 18, whichever is longer.

Refusal to submit to a blood or urine test for drugs other than alcohol or a combination of alcohol and another drug constitutes a refusal and the above mentioned revocation periods apply.

If you consent to chemical testing and the test results indicate an alcohol concentration of eight hundredths or more, or if the test results indicate the presence of a controlled substance or other drug or a combination of alcohol and another drug in violation of 321J.2, the department shall revoke your privilege to operate a motor vehicle for a period of 180 days if you have no revocation within the previous twelve years under the drunk driving or implied consent law, or one year if you have one or more previous revocations under those provisions. If you are under age 18, the revocation will be for the above periods, or until you reach age 18, whichever is longer. If you are under age 21 and the test results indicate 0.02 but less than 0.08, your license will be revoked for 60 days if you have no previous revocation under Iowa Code Chapter 321J within the previous twelve years and 90 days if you have a previous revocation under Iowa Code Chapter 321J within the previous twelve years.

IMPLIED CONSENT ADVISORY FOR COMMERCIAL MOTOR VEHICLE OPERATORS ONLY

If you are operating a commercial motor vehicle and you submit to chemical testing and the test results indicate an alcohol concentration of four hundredths or more **OR** if you refuse to submit to chemical testing, you shall be disqualified from operating a commercial motor vehicle for a period of one year.

The disqualification from operating a commercial motor vehicle shall be for three years instead of one year if you are operating a commercial motor vehicle transporting hazardous material of a type or quantity requiring vehicle placarding.

The disqualification shall be for life instead of the periods above if you previously committed any of the following acts or offenses in any state or foreign jurisdiction while operating a commercial motor vehicle after June 30, 1990; (a) operating while under the influence of an alcoholic beverage or other drug or controlled substance or a combination of such substances; (b) operating with an alcohol concentration of four hundredths or more; (c) refusal to submit to required chemical testing; (d) failure to stop and render aid at the scene of an accident involving your vehicle; (e) a felony or aggravated misdemeanor. The lifetime disqualification may be reduced to 10 years as provided by Federal law.

IMPLIED CONSENT ADVISORY

The Implied Consent Law requires that a peace officer advise the person of the following:

Refusal to submit to the withdrawal of a body specimen for chemical testing will result in revocation of your privilege to operate a motor vehicle for one year if you have not previously been revoked within the previous twelve years under the implied consent or drunk driving laws of this state, or for two years if you have one or more revocations within the previous twelve years. If you are under age 18, the revocation will be for the above periods, or until you reach age 18, whichever is longer.

Refusal to submit to a blood or urine test for drugs other than alcohol or a combination of alcohol and another drug constitutes a refusal and the above mentioned revocation periods apply.

If you consent to chemical testing and the test results indicate an alcohol concentration of eight hundredths or more, or if the test results indicate the presence of a controlled substance or other drug or a combination of alcohol and another drug in violation of 321J.2, the department shall revoke your privilege to operate a motor vehicle for a period of 180 days if you have no revocation within the previous twelve years under the drunk driving or implied consent law, or for one year if you have one or more previous revocations under those provisions. If you are under age 18, the revocation will be for the above periods, or until you reach age 18, whichever is longer. If you are under age 21 and the test results indicate an alcohol concentration of two hundredths (0.02) but less than eight hundredths (0.08), your license will be revoked for 60 days if you have no previous revocation under Iowa Code Chapter 321J within the previous twelve years or 90 days if you have a previous revocation under Iowa Code Chapter 321J within the previous twelve years.

ADDITIONAL IMPLIED CONSENT ADVISORY FOR COMMERCIAL MOTOR VEHICLE OPERATORS ONLY

If you are operating a commercial motor vehicle and you submit to chemical testing and the test results indicate an alcohol concentration of four hundredths or more **OR** if you refuse to submit to chemical testing, you shall be disqualified from operating a commercial motor vehicle for a period of one year.

The disqualification from operating a commercial motor vehicle shall be for three years instead of one year if you are operating a commercial motor vehicle transporting hazardous material of a type or quantity requiring vehicle placarding.

The disqualification shall be for life instead of the periods above if you previously committed any of the following acts or offenses in any state or foreign jurisdiction while operating a commercial motor vehicle after June 30, 1990: (a) operating while under the influence of an alcoholic beverage or other drug or controlled substance or a combination of such substances; (b) operating with an alcohol concentration of four hundredths or more; (c) refusal to submit to required chemical testing; (d) failure to stop and render aid at the scene of an accident involving your vehicle; (e) a felony or aggravated misdemeanor. The lifetime disqualification may be reduced to 10 years as provided by Federal law.

REINSTATEMENT INFORMATION

You must send or deliver the following to the Office of Driver Services, Park Fair Mall, 100 Euclid Ave., P.O. Box 9204, Des Moines, Iowa 50306-9204:

1. Payment of \$200 civil penalty as required by Iowa Code Section 321J.17. This payment must be in cash or by cashier's check, certified check or money order payable to: Treasurer, State of Iowa. If only your privilege to operate commercial motor vehicles is disqualified, this fee is not required.
2. Proof of financial responsibility in accordance with Iowa Code Chapter 321A. If only your privilege to operate commercial motor vehicles is disqualified or you are under age 21 and your alcohol concentration was two hundredths (0.02) but less than eight hundredths (0.08), proof is not required.
3. Proof of satisfactory completion of a course for drinking drivers as provided in section 321J.22.
4. Proof of satisfactory completion of evaluation and treatment or rehabilitation services.

The Office of Driver Services will then send you a notice ending your revocation/disqualification. You must then: (1) present that notice to a Driver License Examiner, (2) successfully complete the required driver license tests, (3) pay the specified reinstatement fee, and (4) pay the appropriate fee for your new license.

When this sanction ends you will be on probation for 12 months. Upon conviction of a moving traffic violation which occurred during the probation period, your privilege to operate motor vehicles will be suspended for a like additional period of time, not to exceed one year.

ADDITIONAL INFORMATION

Contact Office of Driver Services, Park Fair Mall, 100 Euclid Ave., P.O. Box 9204, Des Moines, Iowa 50306-9204, or (515) 244-8725.

DISCLOSURE STATEMENT

The information furnished on Form 432013, "Request and Notice under Iowa Code Chapter 321J/Section 321.208" and Form 432018, "Request for Temporary Restricted License (Work Permit) or Hearing" will be used by the Iowa Department of Transportation to process your request for a work permit or a hearing. The forms may be used as evidence in criminal or civil proceedings. If you request a hearing, the information will be provided to the Department of Inspections and Appeals, which will conduct the hearing. Your full name, address and date of birth are required. Other requested information is optional. Failure to provide the required information may result in a waiver of your right to a hearing or may delay issuance of a work permit.

Form 432018
6-03 H-3303



DO NOT WRITE ABOVE THIS LINE - FOR DEPARTMENT USE ONLY
DO NOT REMOVE/DETACH ANY PART OF THIS FORM

Iowa Department of Transportation

REQUEST FOR TEMPORARY RESTRICTED LICENSE (WORK PERMIT) OR HEARING

You may be eligible for a temporary restricted license (work permit) if your license has not been revoked for an alcohol related offense within the previous twelve years and you are not currently suspended or revoked for another reason, or if your license has been revoked for refusing to submit to a chemical test and you have pled guilty to the OWI charge. You are not eligible for a work permit for the first 30 days if your license is revoked for failing the chemical test and it is your first revocation in twelve years unless there was no accident involvement and the test result is less than .15, then you can apply immediately and not wait 30 days. There is no requirement for an ignition interlock device if the test result is not more than .10 and there was no accident involvement. If you refused the test and it is your first revocation in twelve years, you are not eligible for the first 90 days. A temporary restricted license is not valid for operation of a Commercial Motor Vehicle. You may contact the Office of Driver Services to verify eligibility. You are NOT eligible for a temporary restricted license if your license was revoked because you were under age 21 and you had a test result of two hundredths (0.02) but less than eight hundredths (0.08).

If you are eligible, the enclosed temporary restricted license application must be completed in detail. You must also file form SR-22 (auto liability insurance certificate) covering every vehicle you will drive or register and pay a \$200 civil penalty before the temporary restricted license can be issued. The application, SR-22 and the \$200 civil penalty must be delivered to the Office of Driver Services. You will be notified to appear before a driver examiner for issuance of the temporary restricted license.

If you wish to request a hearing to contest the revocation and/or disqualification, this form must be completed and returned to the Iowa Department of Transportation, Office of Driver Services, Park Fair Mall, 100 Euclid Avenue, P.O. Box 9204, Des Moines, Iowa 50306-9204, within **ten days** after you receive notice of revocation or within 30 days after you receive notice of disqualification or your right to a hearing to contest this action is foreclosed. You cannot operate a motor vehicle after the effective date of the revocation and/or disqualification until you receive authorization from the Office of Driver Services.

- ☐ I hereby request a temporary restricted license (work permit) only.
- ☐ I hereby request a hearing to contest the revocation and/or disqualification of my privilege to drive.

Name: _____
Last First Middle

Address: _____
Street Address

City State Zip Code

Driver License No.: _____ Birth Date: _____
Mo. Day Yr.

Date of Occurrence: _____ County of Occurrence: _____

Name of Law Enforcement Agency: _____

Attorney (if you have one): _____
Name

Street Address City State Zip Code Telephone Number

NO ENVELOPE REQUIRED. SEE REVERSE FOR MAILING INSTRUCTIONS.



Iowa Department of Transportation

OPERATION OF IOWA CODE CHAPTER 321J, SECTION 321.208 AND YOUR RIGHTS

Under Iowa Code Chapter 321J a person who operates a motor vehicle in this state under circumstances which give reasonable grounds to believe that the person was intoxicated is deemed to have given consent to the withdrawal of specimens of the person's blood, breath, or urine for the purpose of determining the alcohol concentration or presence of drugs.

If a person refuses to submit to chemical testing, no test shall be given but the person's privilege to drive shall be revoked by the Department of Transportation (DOT) for one year if the person has no prior revocation within the previous twelve years, and for two years if the person does have a prior revocation within the prior twelve years.

If the person submits to chemical testing and the test results indicate an alcohol concentration of 0.08 or more, or the presence of a controlled substance or other drug or a combination of alcohol and another drug in violation of 321J.2, the DOT shall revoke the person's driving privileges for 180 days if the person has no revocation within the previous twelve years, and for one year if the person has one or more previous revocations within the previous twelve years.

If the person is under age 18, the revocation shall be for the above periods, or until the person reaches age 18, whichever period is longer. If the person is under age 21 and the results indicate 0.02 but less than 0.08, the revocation shall be 60 days if no prior revocations in twelve years or 90 days if a prior revocation in twelve years.

Under §321J.6(3), if the peace officer has reasonable grounds to believe that the person was under the influence of a controlled substance, a drug other than alcohol or a combination of alcohol and another drug, a blood or urine test shall be required even after another type of test has been administered. Refusal of such a blood or urine test will be considered a refusal to submit to chemical testing under §321J.9.

If a person operating a commercial motor vehicle either refuses to submit to chemical testing (including blood or urine test for drugs) or submits to chemical testing and the test results indicate an alcohol concentration of 0.04 or more, the person shall be disqualified from operating a commercial motor vehicle for a period of one year, or a period of three years if the person was operating a commercial motor vehicle transporting hazardous material of a type or quantity requiring vehicle placarding, except, the disqualification shall be for life if the person previously committed, while operating a commercial motor vehicle after June 30, 1990, any of the following acts or offenses in any state or foreign jurisdiction: (a) operating while under the influence of an alcoholic beverage or other drug or controlled substance or a combination of such substances; (b) operating with an alcohol concentration of four hundredths or more; (c) refusal to submit to required chemical testing; (d) failure to stop and render aid at the scene of an accident involving the person's vehicle; (e) a felony or aggravated misdemeanor. A lifetime disqualification is subject to reduction to ten years as provided in federal law.

The revocation shall become effective 10 days after the DOT has mailed notice of the revocation by first class mail, or 10 days after peace officer has served a notice of revocation. The peace officer may issue a temporary license valid only for 10 days. A disqualification shall become effective 30 days after DOT mailed the notice of disqualification or 30 days after the peace officer served the notice. The officer may issue a temporary permit valid only for 30 days.

The DOT is now attempting to revoke your privilege to drive because you have allegedly either refused testing (§321J.9) or failed a chemical test (321J.12 or 321J.2A) and/or to disqualify you from operating a commercial motor vehicle because allegedly while operating a commercial motor vehicle you either refused testing or submitted to testing with a result of 0.04 or more (§321.208).

If you wish to contest the revocation, you must mail a written hearing request to the DOT within 10 days after you have received notice of revocation. If you wish to contest the disqualification you must mail a written hearing request to DOT within 30 days after you receive notice of disqualification. You have been given a form (Form 432018) which you may use for this purpose.

The DOT shall then grant you a hearing within 45 days after it receives the request. The revocation will then be stayed (postponed) until a final DOT ruling is made. However, a disqualification and revocation for 0.02 but less than 0.08 will not be stayed during the administrative proceedings. The hearing may be held by telephone conference call and may be recorded. Its scope shall be limited to the issues of whether the peace officer had reasonable grounds to believe that you were operating a motor vehicle in violation of Iowa Code §321J.2 or 321J.2A(OWI), whether you refused to submit to chemical testing, whether a test was administered and the test results indicated an alcohol concentration of 0.02 but less than 0.08 if you are under 21 or 0.08 or more or whether a test was administered and the test results indicated the presence of a controlled substance or other drug or a combination of alcohol and another drug, in violation of 321J.2, whether you were operating a commercial motor vehicle, and whether a test was administered and the test results indicated an alcohol concentration of 0.04 or more. After the hearing the administrative law judge shall order that the revocation and/or disqualification be either rescinded or sustained.

Upon receipt of the proposed decision of the administrative law judge to sustain a revocation and/or disqualification, you have only 10 days to appeal the decision to the DOT director. The decision may specify the appeal procedure or you may follow the DOT rules found at 761 Iowa Admin. Code Ch. 620. The director shall within 30 days either rescind or sustain the revocation and/or disqualification, or order a new hearing to be held within 20 days.

If the DOT fails to comply with the time limits for hearing and administrative appeal, the revocation and/or disqualification shall be rescinded, unless a continuance has been granted at your request or that of the peace officer.

You may seek judicial review of your revocation or disqualification in accordance with the Iowa Administrative Procedure Act, Iowa Code Chapter 17A, but only if you have exhausted all adequate administrative remedies, including administrative appeal. A petition for judicial review must be filed within 30 days after issuance of the final DOT decision. The DOT will not further postpone a revocation while on judicial review unless the reviewing court so orders. However, the filing of a petition for judicial review shall stay a disqualification pending a determination by the district court.

If your license is revoked you may be entitled to apply for a temporary restricted license (work permit). You may submit an application for a temporary restricted license at any time. (See 321J.4, 321J.9, 321J.12 and 321J.20). Iowa Code §321J.20 provides:

321J.20 Temporary Restricted License.

1. *The department may, on application, issue a temporary restricted license to a person whose motor vehicle license is revoked under this chapter allowing the person to drive to and from the person's home and specified places at specified times which can be verified by the department and which are required by the person's full-time or part-time employment, continuing health care or the continuing health care of another who is dependent upon the person, continuing education while enrolled in an educational institution on a part-time or full-time basis and while pursuing a course of study leading to a diploma, degree, or other certification of successful educational completion, substance abuse treatment, and court-ordered community service responsibilities if the person's motor vehicle license has not been revoked previously under 321J.4, 321J.9, or 321J.12 and if any of the following apply:*
 - a. *The person's motor vehicle license is revoked under section 321J.4. This subsection shall not apply to a revocation ordered under section 321J.4 resulting from a plea or verdict of guilty of a violation of section 321J.2 that involved a death.*
 - b. *The person's motor vehicle license is revoked under section 321J.9 and the person has entered a plea of guilty on a charge of a violation of Section 321J.2 which arose from the same set of circumstances which resulted in the person's motor vehicle license revocation under section 321J.9 and the guilty plea is not withdrawn at the time of or after application for the temporary restricted license.*
 - c. *The person's motor vehicle license is revoked under section 321J.12. However, a temporary restricted license may be issued if the person's motor vehicle license is revoked under section 321J.9, and the revocation is a second revocation under this chapter, and the first three hundred and sixty-five days of the revocation have expired.*

2. *This section does not apply to a person whose license was revoked under section 321J.2A, 321J.4 subsection 4 or 6, or to a person whose license is suspended or revoked for another reason.*
3. *A person holding a temporary restricted license issued by the department under this section shall not operate a motor vehicle for pleasure.*
4. *A person holding a temporary restricted license issued by the department under this section shall not operate a commercial motor vehicle on a highway if a commercial driver's license is required for the person's operation of the commercial motor vehicle. However, this subsection does not apply if the temporary restricted license was issued as a result of a violation of this chapter while the person was operating a vehicle other than a commercial motor vehicle.*
5. *A person holding a temporary license issued by the department under this chapter shall be prohibited from operating a school bus.*
6. *Following certain minimum periods of ineligibility, a temporary restricted license under this section shall not be issued until such time as the applicant installs an ignition interlock device of a type approved by the commissioner of public safety on all motor vehicles owned or operated by the applicant, in accordance with section 321J.4. Installation of an ignition interlock device under this section shall be required for the period of time for which the temporary restricted license is issued. There is no minimum period of ineligibility for first offense revocations if there was no accident involvement and the test result did not exceed .15 and there is no requirement for an ignition interlock device if the test result is not more than 0.10.*

If you are convicted in a criminal court of OWI, and your driver's license has not been revoked for refusing or failing a chemical test for the same occurrence, then the DOT shall revoke your driving privilege for 180 days if you have had no previous alcohol-related conviction or revocation within the previous twelve years, and for two years if you have had one or more previous convictions or revocations within that time.

If the court defers judgment on an OWI violation, the DOT shall revoke the license for a period of 30 to 90 days, if your license has not been revoked for refusing or failing a chemical test for the same occurrence.

If your license is revoked under Ch. 321J, it cannot be reinstated until you have paid a \$200 civil penalty. You must also provide proof of satisfactory completion of evaluation and treatment or rehabilitation services and proof of satisfactory completion of a course for drinking drivers as provided in Section 321J.22 before reinstatement.

If you are convicted in a criminal court of OWI in a commercial motor vehicle and you have not been disqualified for the same occurrence, the DOT shall disqualify you pursuant to Section 321.208.

For the full text of Iowa OWI law, you should read Iowa Code Chapter 321J and Section 321.208. You are also encouraged to consult with an attorney who can further explain the operation of the law and your rights.



Iowa Department of Transportation

APPLICATION FOR TEMPORARY RESTRICTED LICENSE

All information must be sent to: Iowa Department of Transportation
Office of Driver Services
Park Fair Mall, P.O. Box 9204
Des Moines, Iowa 50306-9204

For additional information call: 1-800-532-1121 or 515-244-8725

Please review "Operation of Iowa Code Chapter 321J, Section 321.208 And Your Rights" (Form 432019) to see if eligible for Temporary Restricted License.

THE ENCLOSED APPLICATION MUST BE COMPLETED IN DETAIL. **ALL APPLICANTS MUST FILL OUT SECTION A.** IF APPLICATION IS FOR PURPOSES OTHER THAN EMPLOYMENT FILL OUT THIS SECTION ONLY AND REFER TO THE INSTRUCTIONS 1 THROUGH 6 ON THE REVERSE SIDE.

PLEASE NOTE: The Department and law enforcement may verify the information provided on this application.

SECTION A

Name _____ Date of Birth _____ Phone _____
Address _____ Driver License No. _____
City _____ State _____ Zip _____

OWI SANCTIONS ONLY: Were you involved in an accident when the OWI occurred? YES NO

SECTION B - For employment purposes only, complete the following:

Name of Employer _____ Work Address _____
City _____ State _____ Zip _____
Work Hours _____ ☐ AM ☐ PM to _____ ☐ AM ☐ PM Days of the Week _____
Describe on the job driving _____

I CERTIFY UNDER PENALTY OF PERJURY AND PURSUANT TO THE LAWS OF THE STATE OF IOWA THAT THE PRECEDING STATEMENTS ARE TRUE AND CORRECT.

Applicant's Signature _____

EMPLOYER'S STATEMENT

I understand this is an application for a Temporary Restricted License for work purposes. I hereby verify that the above statements are true and correct. By signing, I certify I am the employer for the above named applicant and/or I have the authority to sign on behalf of the employer.

Business Name _____
Employer's Signature _____ Title _____
Phone No. _____ Date _____

SECTION C - For self-employed purposes only, complete the following:

I understand this is an application for a Temporary Restricted License for work purposes. I hereby verify that the above statements are true and correct. By signing, I certify I am Self-Employed and **do not** have an employer from whom any compensation is received. I agree to notify the Department of any self-employment changes.

Job Description _____
Work Address _____
Work Hours _____ ☐ AM ☐ PM to _____ ☐ AM ☐ PM Days of the Week _____
Business name _____ Phone No. _____

I CERTIFY UNDER PENALTY OF PERJURY AND PURSUANT TO THE LAWS OF THE STATE OF IOWA THAT THE PRECEDING STATEMENTS ARE TRUE AND CORRECT.

Applicant's Signature _____

Iowa Code section 321.182 requires you to notify the Iowa Department of Transportation within 30 days of any change in your mailing address. This notification must be made in writing or in person at any driver license station.

TEMPORARY RESTRICTED LICENSE INSTRUCTIONS: (Please read instructions carefully.)

Iowa law provides that the Department may, upon application and approval, issue a Temporary Restricted License (Work Permit) to a person whose license is suspended or revoked to allow the person to drive at specified times and for specified purposes which can be verified by the Department.

STATEMENTS FOR ITEMS 1 THROUGH 6 MUST BE ON BUSINESS LETTERHEAD AND SIGNED BY THE APPROPRIATE PERSON(S):

1. If the request is to provide transportation for Continuing Health Care for you or a dependent, send a statement from the health care provider verifying the need and stating the location and dates of the treatment.
2. If the request is to attend Continuing Education, send a statement from the educational institution verifying enrollment, stating the course of study, the location, the time of attendance, and signature from the School Administrator or the School Registrar.
3. If the request is to attend Substance Abuse Treatment, send a statement from the treatment provider or Probation Officer, verifying participation in the program, stating the location and the time of attendance.
4. If the request is to perform Court Ordered Community Service, send a copy of the Court Order and an administrator's statement describing the Community Service and stating the location, dates and hours of service.
5. If request is to transport dependent children to and from child care when necessary to continue employment, you must send a statement from the child care provider stating the child care address, phone number and dates and times of service.
6. If the conditions of your employment change, you must send a new employer's statement or you may request a new application and one will be sent to you. **You are not authorized to drive until a new restriction supplement has been issued by the department.**
7. File proof of Financial Responsibility (SR-22) in accordance with Iowa Code, Chapter 321A, when required and pay civil penalty (see #9).
8. You may have to furnish a Certificate of Installation of an Ignition Interlock Device, of a type approved by the Department of Public Safety, on every vehicle owned and operated by you in accordance with Iowa Code 321J.
9. Pay any required civil penalties as follows: For an OWI revocation pay a \$200 civil penalty. For other offenses, effective July 1, 1997, Iowa law requires a civil penalty when the Department suspends, revokes, or bars a motor vehicle license or nonresident operating privilege for a conviction under Chapter 321 and any suspension, revocation or bar under Chapter 321A. Persons age 20 and older pay a civil penalty of \$200. For persons age 19 and under, a civil penalty of \$50 is required. The payment must be made by cashier's check, certified check or money order payable to the Treasurer, State of Iowa and mailed or delivered to: Iowa Department of Transportation, Office of Driver Services, Park Fair Mall, 100 East Euclid Avenue, P.O. Box 9204, Des Moines, IA 50306-9204. **DO NOT SEND CASH.**
10. **If You Are An Iowa Resident:** You must send a completed application and other requirements as outlined in number 1 through 9 above. The Department will notify you when your application for a Temporary Restricted License is approved and all requirements are met. You will then be directed to a Driver's License Station where you must pass the required examinations, pay a \$20.00 reinstatement fee and the fee for a Temporary Restricted License.
11. **If You Are A Non-Resident:** You are not eligible for a Temporary Restricted License in Iowa.
12. If your motor vehicle license or non-resident operating privilege has been revoked for any reason under Chapter 321J (whether as a result of a court order or administrative action), the license or privilege may not be reinstated until you present proof of completion of a course for drinking drivers, and present proof of completion of a substance abuse evaluation and treatment or rehabilitation services.

The Department shall determine the restrictions of your Temporary Restricted License. Your operating privileges will be restricted and your license will remain suspended or revoked except when driving during the times and the reasons specified by the Department. **NOTE: One moving violation may result in cancellation of your Temporary Restricted License.**

B. PBT (PRELIMINARY BREATH TEST) CALIBRATION LOG

CALIBRATION LOG FOR PBT/PRELIMINARY BREATH TEST UNITS

Iowa Administrative Code section 661-7.5(2)(321J) requires a record be kept of each calibration of PBT units. All items are to be recorded "at least once per month." Please use this form in complying with the administrative rule.

Calendar Year _____

Department/Agency _____

Month	Date of Calibration	Peace Officer Calibrating	Unit Type	ID # of Unit Type	Value of Standard	Calibration Reading of This Test	Type of Standard
January							DryGas
February							DryGas
March							DryGas
April							DryGas
May							DryGas
June							DryGas
July							DryGas
August							DryGas
September							DryGas
October							DryGas
November							DryGas
December							DryGas

See back side for explanation of required entry items.

Explanation of Required Items

1. "Date of Calibration"-Please note the month, day, and year of the calibration.
2. "Peace Officer Calibrating"-Please note the name and/or badge number of the officer completing the calibration.
3. "Unit Type"-Please note the type of PBT instrument, i.e., "Alcosensor III", "Intoximeter", etc.
4. "ID # of Unit Type"-Please note the identification number of the device being calibrated.
5. "Value of Standard"-Please note the value of the standard for the device.
6. "Calibration Reading of This Test"-Please note the reading for the calibration being conducted.
7. "Type of Standard"-All PBT units in Iowa use the DryGas standard. You do not need to enter any information in this column unless you have a device that uses another type of standard.

C. PHYSICIAN'S CERTIFICATION FOR DRIVER DEAD, UNCONSCIOUS, OR
OTHERWISE INCAPABLE OF CONSENT OR REFUSAL

CERTIFICATION OF LICENSED PHYSICIAN

STATE OF IOWA

COUNTY OF _____

DATE _____

I, _____, certify that I am a licensed physician. I further
name of physician
certify that on the _____ day of _____, 19 __, I was
consulted at _____ for the purpose of determining the
location
condition of _____
name of person

I do further certify that I find/have found such person is (check)

_____ dead

_____ unconscious

_____ otherwise in a condition rendering the person incapable of consent or refusal, as

follows: _____

and that I

_____ will withdraw _____ have withdrawn

_____ will order to be withdrawn _____ have ordered to be withdrawn

a specimen of the person's (check one)

_____ blood

_____ urine

under the provisions of Iowa Code 321J.7.

(Signature of Licensed Physician)

_____ am/pm Time person certified to be dead, unconscious or otherwise in a
condition rendering the person incapable of consent or refusal.

_____ am/pm Time this form completed

D. SAMPLE DCI DRUG TEST FORMS



Official Report of
Iowa Department of Public Safety
DCI Criminalistics Laboratory
Wallace Building
Des Moines, Iowa 50319

02-12437
CASE NUMBER
11/8/2002
REPORT DATE

See Code of Iowa Section 691.2 Presumption of qualification - evidence - testimony. "It shall be presumed that any employee or technician of the criminalistics laboratory is qualified or possesses the required expertise to accomplish any analysis, comparison, or identification done by the employee's employment in the criminalistics laboratory. Any report, or copy of a report, or the findings of the criminalistics laboratory shall be received in evidence, if determined to be relevant, in any court, preliminary hearing, grand jury proceeding, civil proceeding, administrative hearing, and forfeiture proceeding in the same manner and with the same force and effect as if the employee or technician of the criminalistics laboratory who accomplished the requested analysis, comparison, or identification had testified in person..."

REPORT TYPE: Alcohol

SUSPECT(S):

EXH	FORM	FINDINGS	UNITS	DRUG
A	Urine	0.000 g/67ml		alcohol
A	Urine	Negative Screen		cocaine
A	Urine	Negative Screen		benzoylecgonine (a metabolite of cocaine)
A	Urine	Negative Screen		cannabinoids
A	Urine	Positive Screen		amphetamine and methamphetamine

The above toxicological analyses were completed on Exhibit A, which was submitted as a sample from

The margin of error for this alcohol concentration is +/- 0.004 or +/- 5%, whichever is greater.

SUBSTANCES: THRESHOLD LEVEL:

Amphetamines 1250 ng/ml

A positive screen indicates the possible presence of a substance and/or its metabolites at a level that meets or exceeds the levels established by the Iowa Administrative Code 661-7.9 (321 J).

Report(s) on positive screens to confirm the presence of specific drugs or metabolites will follow in 8-12 weeks.

The submitted evidence in this case is being retained in the laboratory until all analyses have been completed

Traci J. Murano, Criminalist

59443

Benton

Page 1 of 1



Official Report of
Iowa Department of Public Safety
DCI Criminalistics Laboratory
Wallace Building
Des Moines, Iowa 50319

02-12437
CASE NUMBER
1/7/2003
REPORT DATE

See Code of Iowa Section 691.2 Presumption of qualification - evidence - testimony. "It shall be presumed that any employee or technician of the criminalistics laboratory is qualified or possesses the required expertise to accomplish any analysis, comparison, or identification done by the employee's employment in the criminalistics laboratory. Any report, or copy of a report, or the findings of the criminalistics laboratory shall be received in evidence, if determined to be relevant, in any court, preliminary hearing, grand jury proceeding, civil proceeding, administrative hearing, and forfeiture proceeding in the same manner and with the same force and effect as if the employee or technician of the criminalistics laboratory who accomplished the requested analysis, comparison, or identification had testified in person. ."

REPORT TYPE: Toxicology

SUSPECT(S):

EXH	FORM	FINDINGS	UNITS	DRUG
A	Urine	Presence Confirmed		amphetamine and methamphetamine

The above evidence in this case will be destroyed 90 days from the date of this report unless picked up by your agency.

Staci Schmeiser

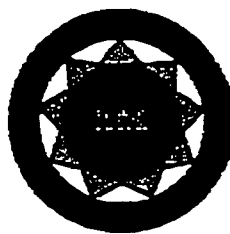
Staci Schmeiser, Criminalist

60168

Benton

E. OPERATIONAL MANUAL FOR DATA MASTER CDM
CHEMICAL BREATH TESTING INSTRUMENT

Thomas J. Vilsack
Governor
Sally J. Pederson
Lt. Governor



Kevin W. Techau
Commissioner

April 15, 2003

TO: ALL LAW ENFORCEMENT AGENCIES:

A district court judge in Johnson County has issued a ruling suppressing DataMaster cdm test results in cases to be heard by that judge. The Attorney General's office is seeking review of the ruling, but we recognize that any final resolution of the issues raised in the Johnson County ruling will be sometime in the future, and the ruling has caused uncertainty in the proper procedure for administering breath tests.

As a result of this uncertainty, we have reviewed the operating instructions you received when you were certified on the instrument. We determined that it would be helpful to clarify instructions for the use of the "NV" key and to create an "Operational Checklist" for use with the instrument.

The enclosed instructions, "Operating the DataMaster cdm Version 1.1" dated April 07, 2003, should be provided to all officers certified to operate the instrument and a copy of the instructions should be kept close to the instrument and available for reference. Please especially note the addendum in the instructions, which discusses use of the "NV" key. Officers should dispose of all earlier copies of "Operating the DataMaster cdm."

In order to insure that all officers have the most recent copy of the instructions and that they have read the "NV" key instructions, we ask that you:

1. Make a copy of "Operating the DataMaster cdm Version 1.1" dated April 07, 2003 for each officer who has been certified to operate the instrument.
2. Make a copy of the enclosed "Operating the DataMaster cdm Update Report" for each officer who has been certified to operate the instrument.
3. Direct each officer to complete and return the enclosed "Operating the DataMaster cdm Update Report" after the officer has read and understood "Operating the DataMaster cdm Version 1.1" and the "Operational Checklist." If an officer has any questions, he or she should contact Bob Monserrate, Mike Tate or Jim Bleskacek directly at 515-281-3666 before signing and returning the report.
4. Please fax or mail the completed reports to:
Iowa DCI Crime Lab—Breath Alcohol Section
920 Morgan Street, Suite G
Des Moines, IA 50309
Fax: 515-281-7638
5. The DCI Crime Lab has enclosed a copy of the "Operational Check List." Please make as many copies of this checklist as is necessary for your departmental needs. Additional "originals" for copying can be obtained via e-mail (monsera@dps.state.ia.ua) or phone (515-281-3666) upon request.

All signed and dated "Operating the DataMaster cdm Update Report" forms must be returned to the DCI Crime Lab no later than May 1, 2003.

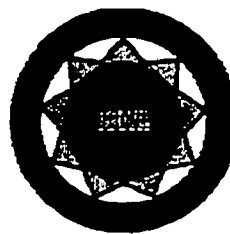
Sincerely,

A handwritten signature in black ink, appearing to read "Kevin W. Techau".

KEVIN W. TECHAU, Commissioner
Department of Public Safety

Enclosures

Thomas J. Vilsack
Governor
Sally J. Pederson
Lt. Governor



Kevin W. Techau
Commissioner

Operating the DataMaster cdm Update Report

I, _____ of the _____, being
Printed Name Department

previously certified as an operator in the use of the DataMaster cdm have read and understand the "Operating the DataMaster cdm Version 1.1" training handout and the DataMaster cdm Operational Checklist.

Date _____ Signature _____

Operating the DataMaster cdm

VERSION 1.1

The DataMaster cdm is an instrument that is designed to analyze a sample of a person's breath and determine the Breath Alcohol Concentration (BrAC) in that sample. The DataMaster cdm analyzes the breath sample using infrared absorption spectrometry. The instrument is automatic; after the series of questions asked by the unit are answered, the DataMaster cdm will proceed through a number of system checks. At the completion of the initial checks, the instrument will request a sample be submitted. Upon completion of the delivery of a sample, the instrument will analyze the sample then proceed through a number of final checks before providing the operator with the results. The checks that the instrument performs, of itself, the surroundings and the breath sample, are done to ensure that the operator obtains test results under the most favorable conditions.

The DataMaster cdm has an external heated breath hose, an internal quartz calibration check plate, a check valve at the mouthpiece connector, a Radio Frequency Interference (RFI) detection system, a keyboard, and a modem. The printer utilizes a roll of 2-¼ inch calculator paper to provide a hard copy of the test results. The mouthpiece is a spit-trap design intended to prevent saliva from being blown into the sample chamber.

The Keyboard

The keys along the top row of keys are called 'Special Operation' keys and only three keys may be needed for use by the operator during a normal testing procedure. These are 'RUN', 'NV', and 'CPY'. The rest of the keys are password protected, turned off, or simply, not of any use during a normal testing procedure.

RUN	Press this key to start the procedure.
NV	Pressing this key interrupts the breath testing and analyzes whatever sample is in the sample chamber at that time.
CPY	Pressing this key provides the operator with an additional copy of the last test performed.
<-	Pressing this key backspaces the cursor position allowing the operator to correct an incorrect letter or number entry made prior to pressing the 'ENTER' key.

The 'User 1' key advances the paper in the printer.

Running a test

Refer to Operational Checklist for DataMaster cdm

1. Press the 'RUN' key.
2. The instrument will ask you to answer the following questions:

UNDER 21? (Y/N)
OWI? (Y/N)
PUBLIC INTOX ? (Y/N)
CDL ? (Y/N)
OTHER ? (Y/N)

You can only answer 'Y' (+ the 'Enter' key) to one of these questions. Enter 'N' to each question that until you reach the question that most accurately identifies the reason for the test. If you enter 'Y' for 'OTHER', the instrument will ask for a 'DESCRIPTION:' which can be answered with words like 'practice', 'demo', 'work release', 'DRE', 'BWT', etc. These questions are for statistical purposes only and the answer will not appear on the printout. After completing this section, the instrument will proceed to the remaining questions, the answers to which will appear on the printout.

The remaining questions are:

SUBJECT'S NAME:	(last, first middle)
DATE OF BIRTH:	(month/day/year – two digits only)
SEX (M/F):	
DRIVER'S LICENSE:	(letters, numbers or both)
STATE OF ISSUE:	(two letter designation <u>only</u>)
INSTRUMENT LOCATION:	(ex. – S.O., P.D., ISP District)
OFFICER'S NAME:	(name only – <u>no</u> badge numbers)
CASE NUMBER:	(letters, numbers or both)
OBSERVATION TIME:	

'OBSERVATION TIME' will be the time when you began the required **15-minute waiting period**. The data entered is to be in the form of a 24-hour clock (ex. – 1 a.m. = 0100, 4 p.m. = 1600). Do not enter the time displayed on the DataMaster cdm at the beginning of the test; the instrument will note the lack of a 15-minute difference between the current time and the observation time and will not allow the test to be performed. If this is the case, the instrument will prompt the operator for the 'Observation Time' again. As always, the subject may not eat, drink, smoke, or chew anything during the minimum 15-minute waiting period. If the subject should regurgitate during the 15 minutes have the subject rinse with water and restart the 15 minute observation.

2. (cont.)

The last question asked before entering into the test sequence is '**REVIEW DATA? (Y/N)**'. A 'Y' response allows the operator to go back through each question and check the entry that was made. Any necessary changes to any entry can be made at this time by simply typing over the entry; any new typing action will replace what was there previously. A 'N' response causes the instrument to proceed into the analytical phase of the test sequence. A change in the 'Y' answer to the initial questions (UNDER 21, OWI, PUBLIC INTOX, CDL, OTHER) will cause the instrument to remove the previous answers and the operator will have to re-enter the appropriate data.

After the initial checks are complete but before the instrument requests a breath sample, the question '**SUBJECT REFUSED? (Y/N)**' is asked. A 'Y' response will cause a printout of the word '**REFUSED**' where the results of the '**SUBJECT SAMPLE**' would normally be printed. A 'N' response will allow the test sequence to proceed immediately into the breath test phase.

3. When it is ready, the instrument will prompt the subject with a flashing '**PLEASE BLOW**' on the display and beeping tone. Insert a disposable mouthpiece into the breath hose connector* and instruct the subject to provide a 'long and steady breath'. Do not tell the subject to 'blow hard'. When the subject is blowing correctly, the flashing '**PLEASE BLOW**' and beeping tone become a solid '**PLEASE BLOW**' and a solid tone. If this is not occurring, it is acceptable to instruct the subject to 'blow harder' in an effort to have the subject's breath sample flow into the instrument at a flow rate considered acceptable by the instrument. The solid '**PLEASE BLOW**' and solid tone must be maintained continuously throughout the delivery of the breath sample in order to satisfy one of the sample requirements. A 'break' in the continuous flow of a breath sample at the proper flow rate for the instrument will result in the return of the flashing '**PLEASE BLOW**' and beeping tone. The subject has approximately two minutes to provide an adequate breath sample. The subject does not need to blow for the entire two minutes; only long enough to satisfy the instruments requirements as to an acceptable sample. This may take up to 15 seconds though the time may vary from subject to subject.

* mouthpiece may be inserted any time prior to '**Please Blow**' prompt.

4. When the instrument has accepted a sample, remove the mouthpiece from the breath hose immediately. If you do not, you may get a '**BLANK ERROR**' and you will have to start over.

5. The instrument will analyze the sample twice and then perform its final checks. After the completion of its final checks, the instrument will print out the results in which the lower of the two test results are to be used. Three copies of the results will be printed; one for the subject, one for the county attorney, and one for the operator (or officer) requesting the test. (The number of copies may vary depending on departmental request).

'SUBJECT REFUSED? (Y/N)' will be asked again if the instrument has been allowed to go through the 2-minute breath-sampling period without a adequate sample having been provided. If this question is answered with a **'Y'** a printout will be obtained and at the point where the results of **'SUBJECT SAMPLE'** are printed, the word **'REFUSED'** will be printed. If this question is answered with a **'N'** after the test period then the word **'INCOMPLETE'** will be printed instead of **'REFUSED'**. At this point, the instrument would then return to the **'READY – PUSH RUN'** screen and if the subject were to be given another opportunity, the instrument will ask **'USE PREVIOUS DATA?' (Y/N)** after the **'RUN'** key is pressed. A **'Y'** will allow the operator to scroll through the information entered previously to verify its accuracy and then proceed into a new opportunity for the subject to provide an acceptable breath sample. (See "Appendix – Special Note").

6. If a status message appears on the display and/or printout, the DataMaster will not print out a subject's test result. At this point the operator has the option to run another test of the subject's breath. By pressing the **'RUN'** key the DataMaster will prompt the operator **'USE PREVIOUS DATA?' (Y/N)**. A **'Y'** will allow the operator to scroll through the information entered previously to verify its accuracy and then proceed into a new opportunity for the subject to provide an acceptable breath sample. (See "Appendix – Special Note").

Some Possible STATUS Codes

INVALID SAMPLE

This can be caused by any number of conditions (saliva, mouth alcohol, etc.). Usually a retest of the subject will result in a valid test.

INTERFERENCE

Typically refers to the situation in which the sample submitted could contain something other than alcohol. If this occurs, repeat the test. If this status code continues to be displayed, obtain a blood or urine sample instead as this could be an indication of a substance other than alcohol impairing the subject.

AMBIENT FAIL

Refers to the situation that the instrument detected ethanol or some other substance during a purge stage of the test procedure. If this occurs, attempt to find the source of the volatile chemical causing the status code and eliminate it if possible. Remedies are similar to those under taken when the status code 'INTERFERENCE' occurs.

PUMP ERROR

Refers to the condition that the flow detector does not detect pump operation. If this message was displayed, check the mouthpiece connector for obstructions and remove the obstruction if possible then re-start the test procedure.

RADIO INTERFERENCE

Refers to the detection of excessive radio frequency energy. This could also be caused by touching the antenna during the test. Re-start the test procedure.

SAMPLE CONTROL OVERRIDE

Refers to the fact that the operator chose to press the 'NV' key when a subject, for whatever reason, was not providing an adequate breath sample per instructions. The test result is valid for the sample that was in the sample chamber at the time the operator pressed the key. Any test result obtained using this method will result in a lower-than-actual subject alcohol level unless the subject is alcohol free. **SAMPLE CONTROL OVERRIDE** will print under the subject sample of the printout.

Addendum for the use of the "NV" key on the DataMaster cdm

If the DataMaster does not accept a breath test and the operator believes the subject provided an adequate breath sample, allow the instrument to go the full 2 minutes until it terminates the test. At this time, the DataMaster cdm will display "SUBJECT REFUSED?" "Y/N". Type "N" and save the "SUBJECT SAMPLE INCOMPLETE" printout. Offer a urine or blood test.

If on the other hand a breath test was not accepted on the DataMaster cdm and the operator believes the subject did not provide an adequate breath sample, the operator may consider using the "NV" (No Volume) key.

The "NV" key may only be used according to the following procedure:

1. If the subject fails to provide an adequate breath sample on the first attempt, allow the subject to continue providing breaths for the full 2 minutes allowed by the instrument until the instrument terminates the test. At this time, the DataMaster cdm will display "SUBJECT REFUSED?" and you will be asked to type in "Y" for yes or "N" for no. If you determine that the subject has been attempting to comply with your request for a sample, type "N". At this point, the words "SUBJECT SAMPLE INCOMPLETE" will be printed. Save this printout.
2. If you determine that a second test attempt will be performed, use a new **mouthpiece.**
3. Run the test over again from the beginning. After the DataMaster gives the "PLEASE BLOW" instruction, instruct the subject to deliver a long steady breath until the instrument accepts the test.
4. If the subject fails to supply an adequate breath sample, and the instrument does not accept the test, after a reasonable time (but before the 2 minute automatic termination) you may use the "NV" key if the subject has indicated that he/she cannot supply an adequate breath sample AND the subject has stopped blowing.
5. If the "NV" key is used, the printout will show "SAMPLE CONTROL OVERRIDE" and will also print the breath test results. Save this printout along with the "SUBJECT SAMPLE INCOMPLETE" printout. Both printouts must be preserved as evidence.

Appendix

Special Note

If the subject fails to deliver an adequate breath sample or a status message appears during the breath test and the operator re-starts the test procedure in an attempt to obtain an adequate breath sample from the subject, it is recommended that a fresh mouthpiece be utilized at that time. This does not include those situations that may include multiple stops-and-starts during a single breath test phase.

Location Conditions

The DataMaster cdm is capable of detecting the volatile chemicals that produce strong odors such as those from a person's body, a cleaning agent, or other chemical substances. These can cause a reading of **'INTERFERENCE'**, **'AMBIENT FAIL'**, or **'BLANK ERROR'**. In these cases, it is suggested that one or more of the following be performed:
the breath hose be moved away from the odor source, the instrument not be used until the odor is removed from the room, the instrument be moved to another room, or a different sample (blood or urine) be collected from the subject.

**** These instructions are furnished to the DataMaster cdm operator during training that the operator may comply with Iowa Administrative Code 661-7.2(1)(321J).**

STATE OF IOWA
INSTRUMENT CDA 136219

DECEMBER 13, 2002

SUBJECT'S NAME:

JOHNSON/JIMM

DATE OF BIRTH: 02/25/70

SUBJECT'S SEX: M

DRIVER LICENSE #: 123456789012345678901

STATE OF ISSUE: IA

INSTRUMENT LOC: DCI

OFFICER'S NAME:

SMITH/LISA

CASE NUMBER: 02-123456

OBSERVATION TIME BEGIN: 07:00

— BREATH ANALYSIS —

BLANK TEST	.000	07:21
INTERNAL STANDARD	.136	07:21
BLANK TEST	.000	07:21
SUBJECT SAMPLE	.173	07:22
SUBJECT SAMPLE	.173	07:22
BLANK TEST	.000	07:23

Conducting a Subject Test with The BAC DataMaster.

RUN	Q	P1	P2	SET	ADV	F1	F2	BUP	TST	MTR	NV	ABT	CLR	CPY
1	2	3	4	5	6	7	8	9	0	.	=	1	.	DEL
TAB	Q	W	E	R	T	Y	U	I	O	P	()		
CTRL	A	S	D	F	Q	H	J	K	L	.	.	.		
SHIFT	Z	X	C	V	B	N	M	SHIFT	
USER 1	SPACE										SPACE		USER 2	
ENTER														
RETURN														

OPERATIONAL CHECKLIST
for the Direct Breath Testing Instrument
DATAMASTER cdm

This list is prepared in accordance with Iowa Administrative Code
661-7.2(1) (321J) Direct Breath Testing

Section 1

1. Press the "RUN" key. Enter data as prompted, and review data if desired.
2. When prompted "SUBJECT REFUSED? (Y/N)" enter 'N' (no) and instruct subject to blow a long, steady breath into the mouthpiece.
 - When the instrument has accepted the sample, remove the mouthpiece.
 - Attach the printout to this document** and complete the case information.
 - If the instrument does not accept the initial breath, instruct the subject to continue to provide breaths until the instrument accepts or terminates the breath test. If the instrument terminates the test, the operator may choose to call the test a refusal or proceed to **Section 2**.
3. When prompted "SUBJECT REFUSED? (Y/N)" enter 'Y' (yes) if subject refuses to provide a breath sample. **Preserve the printout, attach it to this document** and complete the case information.

- Complete Section 2 Part A, or Part B (*but not both A & B*), only if the DataMaster cdm did not accept the subject's breath sample.

Section 2

Part A. In the opinion of the operator, the instrument did not accept an adequate breath sample.

- When prompted "SUBJECT REFUSED? (Y/N)", press 'N'. Remove the mouthpiece.
- Printout will read "SUBJECT SAMPLE INCOMPLETE."
- Attach the printout to this document.**
- Offer the subject a urine or blood test. Complete the case information.

Part B. In the opinion of the operator, the subject did not provide an adequate breath sample.

- When prompted "SUBJECT REFUSED? (Y/N)", press 'N'. **Preserve the printout.**
- Place a new mouthpiece in the mouthpiece connector.**
- Press "RUN" key. Enter (or review) data as prompted.
- When prompted "SUBJECT REFUSED? (Y/N)", enter 'N'.
- When prompted "PLEASE BLOW", instruct the subject to blow a long, steady breath into the mouthpiece.
- Allow a reasonable time (but less than 2 minutes) for the subject to provide a breath sample that meets the instrument's sampling requirements.
- If the subject has indicated the inability to provide an adequate breath sample and has stopped blowing, the operator can choose:
 - press the 'NV' key. Remove the mouthpiece. - **OR**
 - allow instrument to terminate the test and when prompted "SUBJECT REFUSED? (Y/N)", press 'Y' for a refusal.
- Attach BOTH printouts to this document.** Complete the case information.

Section 3 — USE ONLY IF TEST IS ABORTED.

1. The instrument aborted a test at any time due to a STATUS MESSAGE. **Preserve the printout.** Review the applicable status code in the "Operating the DataMaster cdm" and follow those directions if indicated.
2. Offer the subject a urine or blood test **OR**
3. Offer the subject another opportunity to provide a breath sample using a new Operational Checklist.
4. Complete the case information and **attach all printouts to this document.**

CASE INFORMATION:

Iowa Department of Public Safety
DCI – Criminalistics Laboratory
Des Moines, IA 50319

Subject: _____

Operator _____ Date: _____

F. STANDARDIZED FIELD SOBRIETY TEST INSTRUCTIONS
FROM IOWA LAW ENFORCEMENT ACADEMY

Three Hours and Twenty Minutes

SESSION VIII

CONCEPTS AND PRINCIPLES OF THE
STANDARDIZED FIELD SOBRIETY TESTS (SFST)

SESSION VIII

CONCEPTS AND PRINCIPLES OF THE STANDARDIZED FIELD SOBRIETY TESTS (SFST)

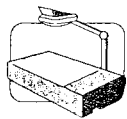
Upon successfully completing this session, the student will be able to:

- o Discuss the development and validity of the research and the standardized elements, clues and interpretation of the three standardized field sobriety tests.
- o Discuss the different types of nystagmus and their effects on the Horizontal Gaze Nystagmus test.
- o Discuss and properly administer the three standardized field sobriety tests.
- o Discuss and recognize the clues of the three standardized field sobriety tests.
- o Describe in a clear and convincing manner and properly record the results of the three standardized field sobriety tests on a standard note taking guide.
- o Discuss the limiting factors of the three standardized field sobriety tests.

CONTENTS SEGMENTS

LEARNING ACTIVITIES

- | | |
|---|--|
| A. Overview: Development and Validation | o Instructor-Led Presentation |
| B. SFST Field Validation Studies | o Instructor-Led Demonstration |
| C. Horizontal Gaze Nystagmus | o Student Practice Session and Demonstration |
| D. Vertical Gaze Nystagmus | |
| E. Walk-and-Turn | |
| F. Combining the Clues of the Horizontal Gaze Nystagmus and Walk-and-Turn | |
| G. One-Leg Stand | |
| H. Limitations of the Three Tests | |
| I. Taking Field Notes on the Standardized Field Sobriety Tests | |



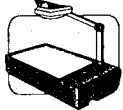
Display Slide VIII-O (Session Objectives)



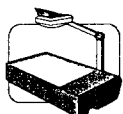
3 Hours
20 Minutes



15 Minutes



Display
Overhead
VIII-1



Display
Overhead
VIII-1A

VIII CONCEPTS AND PRINCIPLES OF THE STANDARDIZED FIELD SOBRIETY TESTS (SFST)

A. Overview: Development and Validation

1. For many years law enforcement officers have utilized field sobriety tests to determine the impairment of a person's driving due to alcohol influence. The performance of the person on those field sobriety tests was used by the officer to develop probable cause for arrest and as evidence in court. A wide variety of field sobriety tests existed and there was a need to develop a battery of standardized valid tests.
2. Beginning in late 1975, extensive scientific research studies were sponsored by NHTSA through a contract with the Southern California Research Institute (SCRI) to determine which roadside field sobriety tests were the most accurate.

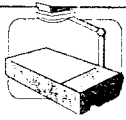
Point out to students that NHTSA contracted with the Southern California Research Institute (SCRI) in 1975 to develop these field tests. SCRI published the following three reports:

California: 1977 (Lab)
California: 1981 (Lab and Field)
Maryland, D.C., V.A., N.C., 1983 (Field)

Aides

Lesson Plan

Instructor Notes



**Display
Overhead
VIII-2**

3. SCRI traveled to law enforcement agencies through the United States to select the most commonly used field sobriety tests. Six tests were used in the initial stages of this study.

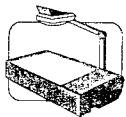
4. Laboratory research indicated that three of these tests, when administered in a standardized manner, were a highly reliable battery of tests for distinguishing BACs above 0.10:

- o Horizontal Gaze Nystagmus (HGN)
- o Walk-and-Turn (WAT)
- o One-Leg Stand (OLS)

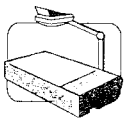
5. NHTSA analyzed the laboratory test data and found:

- o HGN, by itself, was 77% accurate.
- o WAT, by itself, was 68% accurate.
- o OLS, by itself, was 65% accurate.
- o By combining the results of HGN and WAT, an 80% accuracy rate can be achieved.

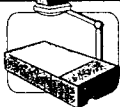
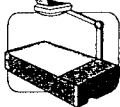


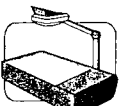
6. The final phase of this study was conducted as a field validation.

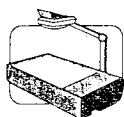


**Display
Overhead
VIII-3**

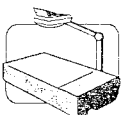


**Display
Overhead
VIII-4**

Aides	Lesson Plan	Instructor Notes
 Display Overhead VIII-4A  Display Overhead VIII-4B	<ul style="list-style-type: none"> o Standardized, practical and effective procedures were developed. o The tests were determined to discriminate in the field, as well as in the laboratory. <p>7. The three standardized tests were found to be highly reliable in identifying subjects whose BACs were above 0.10. The results of the study validated the SFSTs.</p>	
 15 Minutes  Display Overhead VIII-5	<p>B. SFST Field Validation Studies</p> <ol style="list-style-type: none"> 1. Three SFST validation studies were undertaken between 1995 and 1998: <ul style="list-style-type: none"> o Colorado - 1995 o Florida - 1997 o San Diego - 1998 2. The Colorado SFST validation study was the first full field study that utilized law enforcement personnel experienced in the use of SFSTs. <ul style="list-style-type: none"> o The original SCRI study utilized only a few experienced officers in DWI enforcement in both a laboratory setting and field setting. 	<p>See Attachments D, E, and F.</p>
 Display Overhead VIII-6		



Display
Overhead
VIII-7

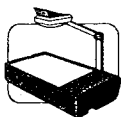


Display
Overhead
VIII-8

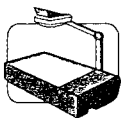
- o Based on the 3-test battery (HGN, WAT, OLS), correct arrest decisions were made 93% of the time. Substantially higher than the initial study results.
- 3. The Florida SFST field validation study was undertaken in order to answer the question of whether SFSTs are valid and reliable indices of the presence of alcohol at 0.08 levels and above when used under present day traffic and law enforcement conditions.
 - o Based on the 3-test battery (HGN, WAT, OLS), correct decisions to arrest were made 95% of the time.
 - o This study has shown that the SFST 3-test battery is the only scientifically validated and reliable method for discriminating between impaired and unimpaired drivers.
- 4. The San Diego SFST field validation study was undertaken because of the nationwide trend towards lowering the BAC limits to 0.08. The question to be answered was "does SFST discriminate at BAC's below 0.10".
 - o Based on the 3-test battery (HGN, WAT, OLS), arrest decisions were supported 91% of the time at the 0.08 BAC level and above.



**1 Hour 15
Minutes**



**Display
Overhead
VIII-9**



**Display
Overhead
VIII-10**

- o HGN is still the most reliable of the 3-test battery.

This study provided the first indications supporting arrest decisions at 0.08 BAC.

The study also suggests that HGN can provide valid indications of 0.04 BAC and above.

Note: Refer to Session VIII, Attachment B for information regarding all SFST research studies.

C. Horizontal Gaze Nystagmus

1. Review of definition.
 - a. Involuntary jerking of the eyes, occurring as the eyes move toward the side.
 - b. In addition to being involuntary:
 - o person is usually unaware that it is happening.
 - o person is powerless to stop it or control it.
2. Key Summary Point.
 - a. Alcohol and certain other drugs cause Horizontal Gaze Nystagmus.
3. Categories of Nystagmus.
 - a. Horizontal Gaze Nystagmus is not the only kind of nystagmus.
 - b. There are other circumstances under which the eyes will jerk involuntary.

c. It is important to know some of the other common types of nystagmus, to be aware of their potential impact on our field sobriety tests.

d. Nystagmus of several different origins may be seen. There are three general categories of nystagmus:

(1) Vestibular Nystagmus is caused by movement or action to the vestibular system.

(a) Types of vestibular nystagmus:

Rotational Nystagmus occurs when the person is spun around or rotated rapidly, causing the fluid in the inner ear to be disturbed.

Post Rotational

When the person stops spinning, the fluid in the inner ear remains disturbed for a short period of time, and the eyes continue to jerk.

Reveal the first category on Slide VIII-10.

Point out that the vestibular system is a sense organ located in the inner ear. It provides information to the brain, and consequently to the eyes about position and movement of the head to maintain orientation and balance of the body.

If you were able to observe the eyes of a rotating person, they would be seen to jerk noticeably.

Also indicate that these types of nystagmus will not interfere with the horizontal gaze nystagmus test due to the conditions under which they occur.

To illustrate rotational and post rotational, swirl a half glass of water several times. Stop swirling glass, water will continue to spin for a short period of time.

Caloric Nystagmus occurs when fluid motion in the canals of the vestibular system is stimulated by temperature as by putting warm water in one ear and cold in the other.

Positional Alcohol Nystagmus (PAN) occurs when a foreign fluid, such as alcohol, that alters the specific gravity of the blood is in unequal concentrations in the blood and the vestibular system.

- (2) Nystagmus can also result directly from neural activity:

NOTE: The original research does not support the administration of HGN to someone who is lying down.

This causes the vestibular system to respond to gravity in certain positions, resulting in nystagmus.

There are two types of PAN:

PAN I-occurs when the alcohol concentration in the blood is greater than the inner ear fluid. PAN I occurs while BAC is increasing.

PAN II - occurs when the alcohol concentration in the inner ear fluid is greater than in the blood. An example of PAN is the spinning of a room when a person lies down after consuming alcohol. This occurs while BAC is decreasing.

Reveal the next category on Slide VIII-10.

Optokinetic Nystagmus occurs when the eyes fixate on an object that suddenly moves out of sight, or when the eyes watch sharply contrasting moving images.

Examples of optokinetic nystagmus include watching strobe lights, rotating lights, or rapidly moving traffic in close proximity.

The Horizontal Gaze Nystagmus test will not be influenced by optokinetic nystagmus if administered properly.

Physiological Nystagmus is a natural nystagmus that keeps the sensory cells of the eye from tiring. It is the most common type of nystagmus.

It happens to all of us, all the time. This type of nystagmus produces extremely minor tremors or jerks of the eyes.

These tremors are generally too small to be seen with the naked eye.

Gaze Nystagmus occurs as the eyes move from the center position. Gaze nystagmus is separated into three types:

Point out that during the Horizontal Gaze Nystagmus test, the suspect is required to focus the eyes on a penlight, pencil or similar object that moves smoothly and relatively slowly across the field of view, thus optokinetic nystagmus will not occur.

Emphasize that physiological nystagmus will have no impact on our standardized field sobriety tests, because its tremors are generally invisible.

Horizontal Gaze Nystagmus occurs as the eyes move to the side. It is the observation of the eyes for Horizontal Gaze Nystagmus that provides the first and most valid test in the standardized field sobriety testing battery. Although this type of nystagmus is most accurate for determining alcohol influence, its presence may also indicate use of certain other drugs.

Vertical Gaze Nystagmus occurs as the eyes gaze upward. The presence of this type of nystagmus is associated with high doses of alcohol for that individual and certain other drugs.

The drugs that produce Vertical Nystagmus are the same ones that produce Horizontal Gaze Nystagmus.

There is no drug that will cause VGN that does not cause HGN. If VGN is present and HGN is not, it could be a medical condition.

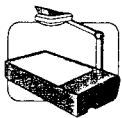
Emphasize to students that this training course is concerned with Horizontal Gaze Nystagmus and that this procedure has been validated as an accurate indicator for alcohol influence by extensive scientific research.

Alcohol is a central nervous system depressant.

Examples of other drugs are: Depressants, Inhalants, PCP and its analogs.

NOTE: All drugs that induce HGN may also induce VGN, if enough of the drug is taken.

Aides	Lesson Plan	Instructor Notes
	<p>(3) Nystagmus may also be caused by certain <u>pathological disorders</u>. They include brain tumors and other brain damage or some diseases of the inner ear. These pathological disorders occur in very few people and in even fewer drivers.</p> <p>4. Medical Impairment.</p> <p>a. The observations that you can make to assess possible medical impairment include:</p> <ul style="list-style-type: none"> o Resting Nystagmus o Tracking ability o Pupil size <p>b. <u>Resting Nystagmus</u> is referred to as jerking as the eyes look straight ahead. This condition is not frequently seen. Its presence usually indicates a pathology or high doses of a drug such as PCP.</p> <p>c. <u>Tracking Ability</u> will be affected by certain medical conditions or injuries involving the brain:</p> <ul style="list-style-type: none"> o If the two eyes do not <u>track together</u>, the possibility of a serious medical condition or injury is present. 	<p>Reveal the next category on Slide VIII-10.</p> <p>Point out that nystagmus caused by pathological disorders is extremely rare in the driving population. Persons suffering from these disorders are rarely able to drive.</p> <p>NOTE: Resting Nystagmus may also be a medical problem.</p> <p>Although this observation is an important medical assessment, it is NOT an HGN administrative procedure step.</p> <p><u>Demonstrate</u> how to check for tracking ability.</p> <p><u>Point out:</u> Even though the possibility of alcohol and/or drug impairment exists, officers should be aware of medical conditions having symptoms in common with alcohol influence.</p>



Display
Overhead
VIII-11

- o By passing a stimulus across both eyes, you can check to see if both eyes are tracking equally.
- o If they don't (i.e., if one eye tracks the stimulus, but the other fails to move, or lags behind the stimulus) there is the possibility of a neurological disorder.
- o If a person has sight in both eyes, but the eyes fail to track together, there is a possibility that the person is suffering from an injury or illness affecting the brain.
- d. Pupil Size will be affected by some medical conditions or injuries:
 - o If the two pupils are distinctly different in size, it is possible that the subject has a glass eye, or is suffering from a head injury or a neurological disorder.

5. Administrative Procedures for Horizontal Gaze Nystagmus.

It is important to administer the Horizontal Gaze Nystagmus test systematically, to ensure that nothing is overlooked.

Note: Testing for HGN in a subject with an eye disorder or an artificial eye has not been validated by research.

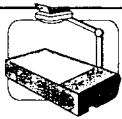
Note: For further information on drugs other than alcohol and procedures for conducting a preliminary examination to check for medical impairment, injury or drug impairment, see the curriculum package entitled "Drugs That Impair Driving", or "Introduction to Drugged Driving" available from the NHTSA.

Prior to administering HGN, check to see if the subject has any eye problems or eye abnormalities.

Aides	Lesson Plan	Instructor Notes
	<ul style="list-style-type: none"> a. Begin by instructing the suspect to remove eyeglasses, if worn. <ul style="list-style-type: none"> o It does not matter whether the suspect can see the stimulus with perfect clarity, as long as suspect can see it at all. b. Give the suspect the appropriate verbal instructions: <ul style="list-style-type: none"> o Put feet together, hands at the side. o Keep head still o Look at the stimulus o Follow movement of the stimulus with the eyes only o Keep looking at the stimulus until told the test is over c. Position the stimulus approximately 12-15 inches (30-38 cm) in front of suspect's nose, and slightly above eye level to commence the test. d. Check for equal tracking. 	<p>Point out that eyeglasses may impede the suspect's peripheral vision, and may also impede the officer's ability to observe the eye carefully.</p> <p>Remind students that nystagmus is <u>not</u> a vision test.</p> <p>Point out that officers should note whether suspect sways, wobbles, etc. while trying to balance.</p> <p>Emphasize that these are the major points that must be conveyed during the verbal instructions.</p> <p>Resting Nystagmus may be observed at this time. Officers should note whether the suspect displays Resting Nystagmus.</p> <p>Move the stimulus rapidly from center to far right, to far left and back to center (approximately 2 seconds).</p>

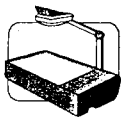
Aides	Lesson Plan	Instructor Notes
	<ul style="list-style-type: none"> e. Check for equal pupil size. f. Check the left eye for lack of the "Smooth Pursuit" clue. If the eye is observed to jerk while moving, that is one clue. <ul style="list-style-type: none"> o Check the right eye for lack of the "Smooth Pursuit" clue and compare. g. Check the left eye for the "distinct nystagmus at maximum deviation" clue. If the jerkiness is distinct, that is one clue. <ul style="list-style-type: none"> o Check the right eye for the "distinct nystagmus at maximum deviation" clue and compare. h. Check the left eye for the "onset of nystagmus prior to 45 degrees" clue. If the jerking begins prior to 45 degrees, that is one clue. <ul style="list-style-type: none"> o Check the right eye for "onset of nystagmus prior to 45 degrees" clue, and compare. 	<p>Demonstrate by placing coins (penny and dime) next to each other on an overhead projector.</p> <p>Remind students to also check for resting nystagmus when checking for equal pupil size.</p> <p>Remind students to make at least two complete passes in front of the eyes to check this clue.</p> <p>Emphasize that the jerking must be definite and distinct in order to score this clue.</p> <p>NOTE: For questions regarding Fatigue Nystagmus see page VIII-22.</p> <p>Point out that in most cases no white should be showing in the corner of the eye when observing this clue.</p> <p>Remind students to check each eye at least twice for this clue.</p>

Aides	Lesson Plan	Instructor Notes
	<ul style="list-style-type: none"> i. Total the clues <ul style="list-style-type: none"> o Maximum number of clues possible for each eye: 3 o Total maximum number of clues possible for both eyes: 6 	<p>Point out that, for many suspects, nystagmus clues will appear in the sequence listed. That is, as BAC increases, many people first show inability of smooth pursuit, then show distinct jerkiness at maximum deviation, and finally show an onset within 45 degrees. However, that may not be true in all cases: the clues may develop in virtually any sequence, in any particular suspect.</p> <p>Also, point out that the suspect's performance may not be exactly identical in both eyes. It is possible that all three clues definitely will be found in one eye, while only two (or sometimes only one) will show up in the other eye. It is always necessary to test <u>both</u> eyes, and to test them independently.</p> <p>Notwithstanding, it is unlikely that the eyes of someone under the influence of alcohol will behave <u>totally</u> different.</p> <p>Thus, if one eye shows all three clues distinctly while the other eye gives no evidence of nystagmus, the person may be suffering from one of the pathological disorders covered previously.</p>



Display
Overhead
VIII-12

6. Clues for Horizontal Gaze Nystagmus.
 - a. When we administer the Horizontal Gaze Nystagmus test, we look for three specific clues as evidence of alcohol influence.
 - b. We check each eye independently for each clue.
 - c. For standardization, begin with the subject's left eye. Check for the first clue. Next, check right eye for same clue. Repeat this procedure for each clue starting with left eye, then right eye. Compare and document the results.
 - d. When we are testing an eye, it is good practice to administer the test by-the-numbers each time, to make sure that no step is overlooked.
 - e. Clue No. 1: Lack of Smooth Pursuit.



Display
Overhead
VIII-13

- o The first clue requires that the suspect move the eye to follow the motion of a smoothly moving stimulus.
- o The stimulus may be the eraser on a pencil, the tip of a penlight, the tip of your finger, or any similar small object.

It is important that student always start with left eye first. Then check right eye for same clue. This procedure must be used for all three clues.

Always start with subject's left eye.

EMPHASIZE THAT:
OFFICER SAFETY IS OF
KEY IMPORTANCE WHEN
ADMINISTERING THESE
TESTS.

Emphasize that suspect must keep the head still and follow the stimulus with the eyes only.

Emphasize here that it is best to use a stimulus which has a contrasting tip or focal point.

Aides

Lesson Plan

Instructor Notes

- o Begin by holding the stimulus approximately 12-15 inches (30-38 cm) in front of the suspect's nose, and slightly higher than the level of the suspect's eye.
- o Move the stimulus smoothly all the way out to the right (checking suspect's left eye first) then move the stimulus smoothly all the way across the suspect's face to the left side (checking the suspect's right eye), then back to center.
- o Make at least two complete passes with the stimulus.
- o If a person is not impaired, the eyes should move smoothly as the object is moved back and forth.
- o If the person is impaired by alcohol and/or some other drugs, the eye should jerk noticeably as it moves back and forth.

Point out that when stimulus slightly higher than eye level, suspect will have to open eyes wide to focus on it. Wide-open eyes make it easier to see the nystagmus.

Analogy: movement of a non-impaired person's eye will be similar to the movement of a marble rolling across a polished pane of glass (i.e., frictionless).

Analogy: movement of an impaired person's eyes will be similar to a marble rolling across a sheet of sandpaper (encountering resistance, friction).

Note: This will also be seen with certain categories of drugs.

Aides	Lesson Plan	Instructor Notes
	<p data-bbox="574 289 938 359">(1) The Mechanics of Clue Number 1.</p> <ul style="list-style-type: none"> <li data-bbox="626 401 959 611">o It is necessary to move the object smoothly to obtain a true test of the eye's ability to pursue smoothly. <li data-bbox="626 653 959 1209">o The stimulus should be moved from center position, all the way out to the right side (checking subject's left eye) where the eye can go no further, and then all the way back across subject's face all the way out to the left side where the eye can go no further (checking subject's right eye) and then back to the center. <li data-bbox="626 1251 959 1493">o The object must be moved steadily, at a speed that takes approximately 2 seconds to bring the eye from center to side. <li data-bbox="626 1566 959 1776">o A good practice is to hold the elbow stiff, but slightly bent, and to pivot the entire arm from the shoulder. 	<p data-bbox="1013 646 1198 678">Demonstrate.</p> <p data-bbox="1013 1251 1448 1528">Point out that the stimulus should be moved at a speed that requires approximately two seconds to bring it from the center out all the way to the right side. It should be returned toward the subject's nose at the same speed.</p> <p data-bbox="1013 1566 1198 1598">Demonstrate.</p>

<ul style="list-style-type: none">o In testing for this clue, make at least two complete passes in front of the eyes.o If you are still not able to determine whether or not the eye is jerking as it moves, additional passes may be made in front of the eyes.	Demonstrate.
(2) Live Demonstration of the Mechanics of Clue No. 1.	Solicit a student to participate in the live demonstration. Station the student-subject in a position where the eyes can easily be seen by the class. (It may be necessary to conduct the demonstration at two or more locations in the class to permit all to see.)
<ul style="list-style-type: none">o Position stimulus approximately 12-15 inches (30-38 cm) in front of nose, slightly higher than eye level.	Articulate each step in the procedural mechanics aloud.
<ul style="list-style-type: none">o Stimulus is moved smoothly from center all the way out to the right (checking subject's left eye), back across subject's face all the way to the left side (checking subject right eye) then back to center.	Point out how the arm is held to ensure smooth movement.

Aides	Lesson Plan	Instructor Notes
	<ul style="list-style-type: none"> o A second pass is conducted the same as the first. o On each pass, the arm is moved smoothly, and the eye is taken as far to the side as possible. <p>(3) Student practice of the mechanics of Clue No. 1.</p> <ul style="list-style-type: none"> o Practice in groups of two or three, taking turns. o Coaching and critiquing students' practice. 	<p>Point out that each pass takes the eye as far to the side as it can go.</p> <p>Point out that it takes approximately 2 seconds to move the object from center to the side as far as the eye can go.</p> <p>Solicit students' questions concerning the procedural mechanics for Clue No. 1.</p> <p>Instruct each student to practice conducting the test of smooth pursuit, using another student as a subject.</p> <p>Remind students that they are to make at least two complete passes in front of the eyes.</p> <p>Common initial mistakes to note and correct:</p> <ul style="list-style-type: none"> o Holding object too close to (or too far from) subject's eyes; o Moving object too slowly (or too quickly) toward the side; o Failing to move object far enough to the side to bring eye to maximum deviation. o Curving downward and curving around. Note: Encourage students to practice this procedure using a flat surface such as a wall for a guide.

Aides

Lesson Plan

Instructor Notes



Display
Overhead
VIII-14

- o Student-led demonstration.

Choose a student who appears to be doing a good job in carrying out the procedural mechanics of Clue No. 1, and have that student come forward with a subject to demonstrate the mechanics to the class.

Resume student practice and allow it to continue until all students appear reasonably proficient in carrying out the mechanics of Clue No. 1.

- f. Clue No. 2: Distinct Nystagmus at Maximum Deviation.

- o Once you have completed the test of smooth pursuit, you will test the eyes for distinct nystagmus when the eye is held at maximum deviation, beginning with the subject's left eye.

- (1) The Mechanics of Clue Number 2.

- o Once again, position the stimulus approximately 12-15 inches (30-38 cm) in front of subject's nose.

Demonstrate

- o Move the stimulus off to the right side (checking suspect's left eye) until the eye has gone as far as possible.

Demonstrate holding the stimulus steadily off to the side.

Aides	Lesson Plan	Instructor Notes
	<ul style="list-style-type: none"> <li data-bbox="618 289 950 499">o Hold the stimulus steady at that position for a minimum of four (4) seconds, and carefully watch the eye. <li data-bbox="618 541 959 751">o Then, move the stimulus back across the subject's face all the way out to the left side (subject's right eye). <li data-bbox="618 793 950 898">o Hold the stimulus steady and carefully watch the eye. <li data-bbox="618 940 954 1255">o If the person is impaired, the eye is likely to exhibit definite, distinct and sustained jerking when held at maximum deviation for a minimum of 4 seconds. <li data-bbox="618 1297 954 1528">o In order to "count" this clue as evidence of impairment, the nystagmus must be distinct and sustained for a minimum of 4 seconds. <li data-bbox="618 1570 950 1843">o If you think you see only slight nystagmus at this stage of the test, or if you have to convince yourself that nystagmus is present, then it isn't really there. 	<p data-bbox="1008 289 1430 499">Point out that four (4) seconds is a relatively long period of time. You cannot simply hold the eye to the side for an instant, and expect to observe distinct jerking.</p> <p data-bbox="1008 541 1446 709">Note: Fatigue Nystagmus. This type of nystagmus may begin if a subject's eye is held at maximum deviation for more than 30 seconds.</p> <p data-bbox="1008 930 1300 961">Emphasize this point.</p> <p data-bbox="1008 1287 1398 1350">ONCE AGAIN, EMPHASIZE OFFICER SAFETY.</p>

	<p>(2) Live Demonstration of the Mechanics of Clue No. 3.</p> <ul style="list-style-type: none"> o Stimulus initially positioned approximately 12-15 inches (30-38 cm) in front of the student-subject's nose, slightly higher than eye level. o Stimulus moved to the side, drawing the eye to its maximum deviation. o Hold the stimulus steady at that point for a minimum of 4 seconds, to determine whether or not there is distinct and sustained nystagmus. o Then, move the stimulus back across the subject's face all the way out to the left side (subject's right eye). o Hold the stimulus steady and carefully watch the eye. 	<p>Solicit a student to participate in the live demonstration.</p> <p>Station the student-subject in a position where eyes can readily be seen by the class. (It may be necessary to conduct the demonstration at two or more locations in the class.)</p> <p>Articulate each step in the procedural mechanics aloud.</p>
--	--	---

Aides	Lesson Plan	Instructor Notes
<div data-bbox="220 1554 342 1667" data-label="Image"> </div> <div data-bbox="196 1667 339 1770" data-label="Caption"> <p>Display Overhead VIII-15</p> </div> <div data-bbox="196 1864 384 1894" data-label="Page-Footer"> <p>HS 178 R1/02</p> </div>	<div data-bbox="630 279 967 564" data-label="List-Group"> <ul style="list-style-type: none"> o Hold the stimulus steady at that point for a minimum of 4 seconds to determine whether or not there is distinct and sustained nystagmus. </div> <div data-bbox="581 602 971 667" data-label="Section-Header"> <p>(3) Student practice of the mechanics of Clue No. 2.</p> </div> <div data-bbox="630 707 971 1306" data-label="List-Group"> <ul style="list-style-type: none"> o Practice in groups of two or three, taking turns. o Coaching and critiquing students' practice. o Student-led Demonstrations </div> <div data-bbox="524 1593 891 1698" data-label="List-Group"> <p>g. Clue No. 3: Onset of Nystagmus Prior to 45 Degrees.</p> </div>	<div data-bbox="1016 602 1438 741" data-label="Text"> <p>Instruct each student to practice conducting the test of maximum deviation, using another student as a subject.</p> </div> <div data-bbox="1016 850 1414 915" data-label="Text"> <p>Common initial mistakes to note and correct:</p> </div> <div data-bbox="1016 919 1414 1199" data-label="List-Group"> <ul style="list-style-type: none"> o not bringing the eye sufficiently far to the side (some white still showing). o not holding the object steadily for at least four seconds, at maximum deviation. </div> <div data-bbox="1016 1239 1446 1411" data-label="Text"> <p>Allow student practice to continue until all students appear reasonably proficient in carrying out the mechanics of Clue No. 2.</p> </div> <div data-bbox="1016 1451 1375 1554" data-label="Text"> <p>Solicit students' questions concerning the procedural mechanics for Clue No. 2.</p> </div>

- o Once again, position the stimulus approximately 12-15 inches (30-38 cm) in front of subject's nose.
- o The angle of onset of nystagmus is simply the point at which the eye is first seen jerking.
- o Generally speaking, the higher the BAC, the sooner the jerking will start as the eye moves toward the side.
- o If the jerking begins prior to 45-degrees, that person's BAC could be 0.08 or above.
- o It is not difficult to determine when the eye has reached the 45-degree point, but it does require some practice.
- o If you start with the stimulus approximately 12-15 inches (30-38 cm) directly in front of the nose, you will reach 45-degrees when you have moved the stimulus an equal distance to the side.
- o Two other important indicators can be used to determine if the eye is within 45 degrees:

EMPHASIZE OFFICER SAFETY.

Examples: With someone at a very high BAC (0.20+), the jerking might begin almost immediately after the eye starts to move toward the side. For someone at 0.08 BAC, the jerking might not start until the eye has moved nearly to the 45 degree angle.

REMIND STUDENTS THAT THE ADMINISTRATION OF HGN IS NOT TO BE USED TO ESTIMATE SPECIFIC BAC LEVEL.

Instruct students that whatever distance you position the stimulus from the nose, you will reach 45 degrees when you have moved the stimulus an equal distance to the side. (i.e., If you start with the stimulus 12 inches from the nose, move it 12 inches to the side.)

Point out the white showing in the eye portrayed in Slide VIII-19. Note that some people's eyes may exhibit no white in the corner prior to 45-degrees.

Aides

Lesson Plan

Instructor Notes

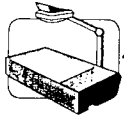
	<ul style="list-style-type: none"> - at 45 degrees, some white usually will still be visible in the corner of the eye (for most people). - If you started with the stimulus approximately 12-15 inches (30-38 cm) in front of the suspect, when you reach 45 degrees the stimulus will usually be lined up with, or slightly beyond, the edge of the subject's shoulder. <p>(1) The Mechanics of Clue No. 3.</p> <ul style="list-style-type: none"> o The stimulus is positioned approximately 12-15 inches from (30-38 cm) subject's nose. o It is necessary to move the stimulus slowly to identify the point at which the eye begins to jerk. o Start moving the stimulus towards the right side (left eye) at the speed that would take approximately 4 seconds for the stimulus to reach the edge of the suspect's shoulder. 	<p>Point out alignment of stimulus and shoulder in Slide VIII-19.</p> <p>Point out that this latter indicator may not be valid if the suspect is either a very large or a very small person.</p> <p>Demonstrate stopping the stimulus, and holding it steady.</p>
--	--	---

Aides	Lesson Plan	Instructor Notes
	<ul style="list-style-type: none"> o As you are slowly moving the stimulus, watch the eye carefully for any sign of jerking. o When you see the jerking begin, immediately stop moving the stimulus and hold it steady at that position. o With the stimulus held steady, look at the eye and verify that the jerking is continuing. o If the jerking is <u>not</u> evident with the stimulus held steady, you have <u>not</u> located the point of onset. Therefore, resume moving the stimulus slowly toward the side until you notice the jerking again. o When you locate the point of onset of nystagmus, you must determine whether it is prior to 45 degrees. - Verify that some white is still showing in the corner of the eye. 	<p>Demonstrate movement at that speed.</p> <p>Point out that nystagmus doesn't go away once the eye stops moving. If the officer actually has found the point of onset, the eye will continue to jerk when the stimulus is held steady.</p>

Aides**Lesson Plan****Instructor Notes**

	<ul style="list-style-type: none">- Examine the alignment between the stimulus and the edge of the suspect's shoulder.o Start moving the stimulus towards the left side (right eye) at the speed that would take approximately 4 seconds for the stimulus to reach the edge of the suspect's shoulder.o As you are slowly moving the stimulus, watch the eye carefully for any sign of jerking.o When you see the jerking begin, immediately stop moving the stimulus and hold it steady at that position.o With the stimulus held steady, look at the eye and verify that the jerking is continuing.	<p>Demonstrate stopping the stimulus, and holding it steady.</p> <p>Demonstrate movement at that speed.</p> <p>Point out that nystagmus doesn't go away once the eye stops moving. If the officer actually has found the point of onset, the eye will continue to jerk when the stimulus is held steady.</p>
--	---	--

	<ul style="list-style-type: none"> o If the jerking is <u>not</u> evident with the stimulus held steady, you have <u>not</u> located the point of onset. Therefore, resume moving the stimulus slowly toward the side until you notice the jerking again. o When you locate the point of onset of nystagmus, you must determine whether it is prior to 45 degrees. <ul style="list-style-type: none"> - Verify that some white is still showing in the corner of the eye. - Examine the alignment between the stimulus and the edge of the suspect's shoulder. <p>(2) Live Demonstration of the Mechanics of Clue No. 3.</p> <ul style="list-style-type: none"> o Stimulus initially positioned approximately 12-15 inches (30-38 cm) in front of student-subject's nose, slightly higher than eye level. 	<p>Solicit a student to participate in the live demonstration.</p> <p>Station the student-subject in a position where student's eyes can readily be seen by the class. (It may be necessary to conduct the demonstration at two or more locations.)</p>
--	---	---



Display
Overhead
VIII-16

- o Student-led demonstration.

7. Training Aid: The 45 Degree Template

- a. A training aid has been provided to help you practice estimating a 45 degree angle.
- b. The outline of a square, with its diagonal line, gives us a 45 degree angle.
- c. This outline, or template, is provided for practice only.
- d. To use the template, have your training partner hold the corner of the square under the nose.
- e. When you line up your stimulus with the diagonal, your partner will be looking along a 45 degree angle.

8. Student practice with 45 degree Template.

- a. Practice in groups of two or three, taking turns.

- o Incorrect position of stimulus.
- o Moving stimulus too fast.

Instruct students to remove their copies of the template from their student manuals.

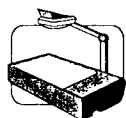
NOTE: See Attachment A following Slide VIII-35 - The 45 Degree Template.

Demonstrate proper placement of the template.

It is not to be used with actual DWI suspects.

Demonstrate placement of the pencil or penlight.

Instruct students to begin by lining the stimulus up with the diagonal, so they can become familiar with the position of an eye at a 45 degree angle.



**Display
Overhead
VIII-17**

- b. Coaching and critiquing students' practice.

- c. Student-led demonstration.

9. Test Interpretation.

- a. Based upon the original developmental research into Horizontal Gaze Nystagmus, the criterion for this test is 4.

Point out the amount of white showing in the corner of an eye at 45 degrees.


Next, instruct each student to attempt to locate the 45 degree point without using the template, then to raise the template to check the accuracy of the estimate.

Common initial mistakes to note and correct:

- o Failing to check for white in the corner of the eye.
- o Failing to check alignment of object with shoulder.
- o Tending to stop short of 45 degrees.

Choose a student who appears to be doing a good job in estimating a 45 degree angle, and have the student come forward to demonstrate to the class.

Resume student practice, and allow it to continue until all students appear reasonably proficient in carrying out the mechanics of Clue No. 3.

Aides	Lesson Plan	Instructor Notes
	<div><div><div><div><div></div><div></div><div></div><div></div><div></div><div></div></div><div></div></div><div>5 Minutes</div><div></div><div>Display Overhead VIII-18</div></div></div> <div><div><div><div></div><div></div><div></div><div></div><div></div><div></div></div><div></div></div><div>b. If a person exhibits at least 4 out of the possible 6 clues, the implication is a BAC above 0.10.</div><div>c. Using this criterion, the test is 77% accurate.</div></div> <div>10. Test Demonstration.</div> <div>D. Vertical Gaze Nystagmus</div> <div><div><div><div></div><div></div><div></div><div></div><div></div><div></div></div><div></div></div><div>1. The <u>Vertical Gaze Nystagmus</u> test is easy to administer.</div><div><div><div></div><div></div><div></div><div></div><div></div><div></div></div><div></div></div><div><div>o Position the stimulus <u>horizontally</u>, approximately 12-15 inches (30-38 cm) in front of the subject's nose.</div><div>o Instruct the subject to hold the head still, and follow the stimulus with the eyes only.</div></div></div>	<div>Note: Remind students that the SFST field evaluation study conducted in San Diego in 1998 indicated that "HGN alone can provide valid indications to support arrest decisions at 0.08 BAC."</div> <div>Choose a student to serve as a demonstration subject.</div> <div>Conduct a complete test of that student-subject, articulating every step in the testing sequence (slide VIII-15 should be redisplayed during this demonstration).</div> <div>Upon completion of the demonstration, solicit students' questions concerning Horizontal Gaze Nystagmus.</div> <div>If time permits, conduct another complete demonstration of HGN, using another student.</div> <div>Point out that vertical nystagmus was not examined in the original research that led to the validation of the Standardized Field Sobriety Test battery (Horizontal Gaze Nystagmus, Walk-and-Turn and One-Leg Stand).</div>
HS 178 R1/02	VIII-32	

VIII-32

Aides	Lesson Plan	Instructor Notes
	<p>d. The physical tasks include balance and coordination; the suspect is required to maintain balance and coordination while standing still, walking, and turning.</p> <p>2. Test Stages</p> <p>a. The Walk-and-Turn test has two stages, the <u>instructions</u> stage and the <u>walking</u> stage.</p> <p>b. Both stages are essential parts of the test.</p> <p>c. Important evidence of impairment often comes to light during both stages.</p> <p>3. Test Requirements</p> <p>a. The test requires the suspect to take nine heel-to-toe steps in a straight line; to turn around in a prescribed manner; and, to return nine heel-to-toe steps along the line.</p> <p>b. This test should be conducted on a reasonably dry, hard, level, non-slippery surface.</p> <p>c. The line should be long enough to permit the suspect to take nine heel-to-toe steps along it.</p>	<p>Remind students that prior to administering this test, ask the subject if they have any physical problems or disabilities.</p> <p>NOTE: Standardizing this test for every type of road condition is unrealistic. The original research study recommended that this test be performed on a dry, hard, level, nonslippery surface and relatively safe conditions. If not, the research recommends: 1) suspect be asked to perform the test elsewhere; or 2) only HGN be administered. However, recent field validation studies have indicated that varying environmental conditions have not affected a suspect's ability to perform this test.</p> <p>NOTE: Suspects with heels 2" or higher should be given the opportunity to remove their footwear.</p>

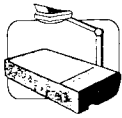
Aides	Lesson Plan	Instructor Notes
	<p>d. If a line is not available, the officer may create a line.</p> <p>4. Demonstration of the Instructions Stage.</p> <p>a. FOR STANDARDIZATION PURPOSES, instruct suspects to place left foot on the line first.</p> <p>b. Then instruct suspects to place their right foot on the line, ahead of the left foot, with heel of right against the toe of left.</p> <p>c. Tell suspect to place arms down at sides.</p> <p>d. Stress that suspect is to maintain that position until you have completed the instructions.</p> <p>e. Inform suspect <u>not</u> to begin walking until told to do so.</p>	<p>NOTE: If no line exists, it acceptable to have a suspect walk an imaginary line.</p> <p>When demonstrating the instructions stage, it is very important that the students be able to see the instructor's feet. It may be necessary to demonstrate at several locations in the classroom.</p> <p><u>Remind students of officer safety precautions.</u></p> <ul style="list-style-type: none"> o weapon side away from suspect o never turn back on suspect o aware of surroundings (environment) <p>Demonstrate placement of both feet.</p> <p>Demonstrate placement of arms at sides.</p>

Aides	Lesson Plan	Instructor Notes
	<ul style="list-style-type: none"> f. At this point, ask suspect: "Do you understand?" g. Although this position is not a stance that people normally will take of their own choosing, it is not difficult for an unimpaired person to maintain this stance, even for several minutes. h. People who are impaired can maintain this stance if they concentrate their full attention on it. i. When you are with a suspect who appears to be impaired, you may see the following behaviors during the instructions stage. <ul style="list-style-type: none"> o Fail to maintain heel-to-toe stance. o Starts walking before commanded. j. Impaired suspects may concentrate so much on maintaining balance there is little or no comprehension of the subsequent instructions. 5. Demonstration of the Walking Stage. 	<p>Emphasize that officer must receive some affirmative response before continuing.</p> <p>NOTE: An impaired person cannot concentrate their full attention on maintaining the stance. They also have to listen to and comprehend your instructions.</p> <p>Demonstrate.</p> <p>Demonstrate.</p> <p>Instructor may break away from the heel-to-toe stance at this point.</p> <p>A straight line must be available for this and subsequent demonstrations.</p> <p>A 10-12 foot strip of masking tape on the floor of the classroom will prove suitable.</p>

Aides	Lesson Plan	Instructor Notes
<div data-bbox="240 695 362 810" data-label="Image"> </div> <p data-bbox="217 810 362 911">Display Overhead VIII-20</p>	<ul style="list-style-type: none"> a. Walking stage requires nine heel-to-toe steps along the line, a turn, and nine steps back along the line. b. While walking, keep the arms at the sides, count the steps out loud, and keep watching the feet. c. Execute Walk-and-Turn. <p>6. Walk-and-Turn Administrative Procedures</p> <ul style="list-style-type: none"> a. Initial verbal instructions <ul style="list-style-type: none"> o Tell suspect to assume the heel-to-toe stance (left foot on line, then right foot on line, ahead of left). o Tell suspect to place arms down at sides. o Tell suspect not to start walking until told to do so. o Make sure suspect understands instructions. b. Description of basic test requirements. <ul style="list-style-type: none"> o Tell suspect to take nine heel-to-toe steps on the line, to turn around, keeping one foot on the line, and to return nine heel-to-toe steps. 	<p>Instructor's demonstration. (repeat if necessary)</p> <p>Selectively reveal major sections of overhead.</p> <p>NOTE: FOR STANDARDIZATION PURPOSES, suspect is told to place left foot on line first, then right foot on line, ahead of left in a heel-to-toe position.</p> <p>Stress that officers should never turn their backs on suspects while demonstrating. Instead, they should walk at right angle to the line, keeping the weapon away from the suspect.</p>

Aides	Lesson Plan	Instructor Notes
	<ul style="list-style-type: none"> o Demonstrate what you mean by walking heel-to-toe. (3 steps suffice for the demonstration) c. Description of turn procedures. <ul style="list-style-type: none"> o Tell suspect that, on the ninth step, keep the <u>front</u> foot on the line, and turn by taking several small steps with the other foot. o Demonstrate the turn for the suspect. d. Final verbal instructions. <ul style="list-style-type: none"> o Tell suspect that, while walking, to watch feet at all times. o Tell suspect to keep arms at sides at all times. o Tell suspect to count steps out loud. o Tell suspect that, once the walking begins, not to stop until the test is completed. 	<p>NOTE: This turn procedure is provided in order to standardize the turn described in the study and for suspects' safety.</p> <p>Stress that, when demonstrating the turn, officers should stand at right angle to the line with the suspect to their left. Then, they can turn on the left leg without ever turning their backs to the suspect.</p> <p>NOTE: Difference for left-handed officers.</p> <p>NOTE: The final verbal instructions are provided to further standardize administration of the test described in the study.</p>

Aides	Lesson Plan	Instructor Notes
	<ul style="list-style-type: none"> o Ask if suspect understands the instructions. Point out that, if suspect doesn't understand some part of the instructions, officer should repeat only that part which suspect doesn't understand. <p>7. Demonstration of Walk-and-Turn Administrative Procedures.</p> <ul style="list-style-type: none"> a. Tell the student-subject to assume the instructions stance. b. Tell the student-subject not to start walking until told to do so. c. Tell the student-subject of the requirement to take nine heel-to-toe steps, to turn, and to take another nine heel-to-toe steps. d. Tell the student-subject of the required turn procedures. Demonstrate the proper turn. e. Give the student-subject the final verbal instructions: <ul style="list-style-type: none"> o Keep watching feet o Count steps out loud o Arms at sides o Don't stop walking until test is completed. f. Ask student-subject if instructions are understood. 	<p>Solicit students' questions concerning the Walk-and-Turn administrative procedures.</p> <p>Select a student to participate as a subject in the demonstration.</p> <p>Use precise language to direct the student-subject to assume the instructions stance.</p> <p>Make sure directions are understood.</p> <p>Demonstrate several heel-to-toe steps.</p> <p>Demonstrate the turn.</p> <p>Clarify any parts that are not understandable.</p>



Display
Overhead
VIII-21

8. Clues for Walk-and-Turn Test

- a. When administering the Walk-and-Turn test, we look for certain specific behaviors, at certain times in the test.
- b. Each behavior, or action, is considered as one clue.
- c. There is a maximum of eight clues on this test.
- d. The first two clues are checked during the instructions stage.
 - o Can't balance during instructions.

At this point, do not instruct the student-subject to execute the test. Rather, thank the student-subject for participating and allow the student to return to the seat.

Solicit students' questions concerning the test administrative procedures.

Selectively reveal major sections of overhead.

Reveal the first major section of slide VIII-21.



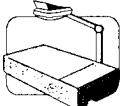
Emphasize that this clue is recorded only if the feet actually break apart.

Note: During the instructions stage, do not record the clue simply because suspect raises arms or wobbles slightly.

Demonstrate actions that constitute "can't balance during instructions", and demonstrate other actions that do not justify recording this clue.

Aides	Lesson Plan	Instructor Notes
	<p>f. The next clue is an <u>improper turn</u>. This clue should be recorded if the suspect:</p> <ul style="list-style-type: none"> o Loses balance on turn (staggers, stumbles, etc.); <u>or</u>, o Turns other than the way officer demonstrated. <p>g. The <u>next clue</u> is checked on the basis of the number of steps that the suspect actually takes.</p> <ul style="list-style-type: none"> o If the suspect takes other than nine steps, in either direction, it is considered only one clue. <p>h. The test may be terminated if the suspect cannot safely complete it. For example:</p> <ul style="list-style-type: none"> o Suspect steps off the line three or more times. o Suspect nearly falls. 	<p><u>Examples:</u> (Demonstrate)</p> <ul style="list-style-type: none"> o pauses while walking <u>and</u> simultaneously raises arms. o misses heel-to-toe <u>and</u> simultaneously stops walking. <p>Reveal the next item on slide VIII-21.</p> <p>Reveal the next item on slide VIII-21.</p> <p>Demonstrate various ways of "turning incorrectly" (i.e., pivots, spins).</p> <p>Reveal the next item on slide VIII-21.</p> <p>Emphasize that it is the number of steps that the suspect physically takes that matters here. Mistakes in the verbal count do not justify recording this clue.</p> <p>Reveal the last item on slide VIII-21.</p> <p>NOTE: If suspect can't do test, record as if all eight clues were observed.</p>

Aides	Lesson Plan	Instructor Notes
<div data-bbox="232 590 350 705" data-label="Image"> </div> <p data-bbox="212 707 347 806">Display Overhead VIII-22</p>	<ul style="list-style-type: none"> o Suspect gets into a "leg-lock" position (legs crossed, unable to move) <p data-bbox="487 636 820 705">9. Walk-and-Turn Test Interpretation</p> <ul style="list-style-type: none"> a. Based on the original developmental research into the Walk-and-Turn test, the criterion for this test is 2. b. If a person exhibits at least 2 out of the possible 8 clues, the implication is that the suspect has a BAC above 0.10. c. Using that criterion, this test is 68% accurate. d. Restrictions. <p data-bbox="482 1451 818 1482">10. Test Demonstrations</p>	<p data-bbox="1031 279 1357 310">Demonstrate "leg-lock".</p> <p data-bbox="1031 352 1468 457">Emphasize that the test should be stopped if unsafe for the suspect.</p> <p data-bbox="1031 499 1458 604">Solicit students' questions concerning the Walk-and-Turn clues.</p> <p data-bbox="1021 1241 1448 1415">NOTE: The original research indicated that individuals over 65 years of age had difficulty performing this test.</p> <p data-bbox="1021 1455 1435 1524">Choose a student to serve as a demonstration subject.</p> <p data-bbox="1021 1564 1432 1772">Conduct a complete test of the student-subject, carefully carrying out all of the administrative procedures. (Slide VIII-20 should be redisplayed during the demonstration.)</p>
HS 178 R1/02	VIII-43	

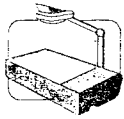
Aides	Lesson Plan	Instructor Notes
 5 Minutes	<p>F. Combining the Clues of The Horizontal Gaze Nystagmus and Walk-and-Turn.</p> <ol style="list-style-type: none"> Based on the original research you will be 80% accurate in classifying suspects that are above 0.10. 	<p>Have the student-subject actually perform the walking stage of the test.</p> <p>Discuss the student-subject's performance in terms of the test scoring factors. (Slide VIII-25 should be redisplayed during this discussion.)</p> <p>If time permits, conduct another demonstration using another student-subject.</p>
 35 Minutes  Display Overhead VIII-23	<p>G. One-Leg Stand</p> <ol style="list-style-type: none"> Review of Divided Attention definition <ol style="list-style-type: none"> One-Leg Stand is another field sobriety test that employs divided attention. The suspect's attention is divided among such simple tasks as balancing, listening, and counting out loud. 	<p>NOTE: A combination of four or more clues of HGN and two or more clues of the Walk-and-Turn, suspects can be correctly classified as above 0.10 BAC 80% of the time.</p> <p>Selectively display slide.</p>

Aides	Lesson Plan	Instructor Notes
	<p>c. Although none of these is particularly difficult in itself, the combination can be very difficult for someone who is impaired.</p> <p>2. Test Stages.</p> <p>a. Like all divided attention tests, One-Leg Stand has two stages.</p> <p>b. They are the <u>instructions</u> stage and the <u>balance and counting</u> stage.</p> <p>c. Both stages are important, because they can affect the suspect's overall performance on the test.</p> <p>3. Test Requirements.</p> <p>a. The test requires the suspect to stand on one leg, with the other leg held out straight, approximately six inches (15 cm) off the ground, for 30 seconds.</p> <p>b. This test should be conducted on a reasonably hard, dry, level, and non-slippery surface.</p> <p>4. Demonstration of the Instructions Stage.</p>	<p>Remind students that prior to administering this test, check if the subject has any physical problems or disabilities.</p> <p>Selectively display remainder of slide.</p> <p>Demonstrate the One-Leg Stand.</p> <p>NOTE: Standardizing this test for every type of road condition is unrealistic. The original research study recommended that this test be performed on a dry, hard, level, nonslippery surface and relatively safe conditions. If not, the research recommends: 1) suspect be asked to perform the test elsewhere; or 2) only HGN be administered. However, recent field validation studies have indicated that varying environmental conditions have not affected a suspect's ability to perform this test.</p>

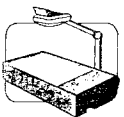
Aides

Lesson Plan

Instructor Notes



**Display
Overhead
VIII-24**



**Display
Overhead
VIII-24A**

6. One-Leg Stand Administrative Procedures.

a. Instructions stage.

- o Stand with feet together.
- o Keep arms at side.
- o Maintain position until told otherwise.

b. Balance and counting stage.

- o Raise one leg, either leg.
- o Keep raised leg approximately 6 inches (15 cm) off the ground, foot pointed out.
- o Keep both legs straight.
- o Keep eyes on elevated foot.
- o Count out loud from one-thousand-and-one, one-thousand-and-two, one-thousand-and-three, and so on until told to stop.

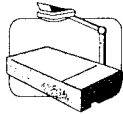
7. Demonstration of the One-Leg Stand Administrative Procedures.

The suspect may be told at any time to stop counting for their safety or inability to properly perform the test.

Selectively display slide.

Selectively display slide VIII-24A.

NOTE: Officer should always time the 30 seconds. If the suspect puts their foot down too soon, tell suspect to keep foot elevated and continue counting. If suspect counts too slow, stop the test at 30 seconds.

Aides	Lesson Plan	Instructor Notes
 <p>Display Overhead VIII-25</p>	<ul style="list-style-type: none"> a. Instructions stage: tell subject to: <ul style="list-style-type: none"> o stand with feet together o keep arms at side o maintain that position until told otherwise (ask if understands) b. Balance and counting stage <ul style="list-style-type: none"> o Raise one leg (either leg), approximately 6 inches (15 cm) off the ground, foot pointed out. o Keep both legs straight. o Keep eyes on elevated foot. o While holding that position, count out loud in the following manner: one-thousand-one, one to one-thousand-two, one-thousand-three until told to stop. <p>8. Clues for the One-Leg Stand.</p> <ul style="list-style-type: none"> a. When administering the one-leg stand test, we look for certain specific behaviors. b. Each behavior or action is considered one clue. c. There is a maximum number of 4 clues on this test. 	<p>Always ask subject if they understand directions before beginning test.</p> <p>Selectively reveal contents of slide.</p> <p>Reveal the first item on slide.</p>

Aides	Lesson Plan	Instructor Notes
	<p>d. The first clue is <u>swaying</u>.</p> <p>e. The next clue is <u>using the arms</u> to balance.</p> <p>f. The next clue is <u>hopping</u>.</p> <p>g. The next clue is <u>putting the foot down</u>, before 30 seconds elapse.</p> <p>o If suspect's foot touches ground, have suspect raise it and continue counting until told to stop.</p>	<p>Emphasize that swaying means a distinct, noticeable side-to-side or front-to-back movement of the elevated foot or of the suspect's body.</p> <p>Slight tremors of the foot or body should not be interpreted as swaying.</p> <p>Demonstrate swaying.</p> <p>Reveal the next item on slide.</p> <p>Point out that a movement of the arms of six inches or more from the side is sufficient to record this clue.</p> <p>Demonstrate using the arms to balance.</p> <p>Reveal the next item on slide.</p> <p>Demonstrate hopping.</p> <p>Reveal the next item on slide.</p> <p>Demonstrate putting the foot down.</p> <p>Emphasize some suspects count slowly and may stand on the leg for more than 30 seconds. If suspect is counting slowly, terminate the test after 30 seconds have passed.</p> <p>Point out that it is possible to note two clues simultaneously.</p> <p><u>Examples</u> (Demonstrate):</p> <ul style="list-style-type: none"> o hopping <u>and</u> swaying o foot down <u>and</u> arms raised.

Aides	Lesson Plan	Instructor Notes
<div data-bbox="224 569 342 680" data-label="Image"> </div> <p data-bbox="204 684 342 783">Display Overhead VIII-26</p>	<ul style="list-style-type: none"> <li data-bbox="529 285 959 390">h. The test may be terminated if the suspect cannot safely complete it. For example: <ul style="list-style-type: none"> <li data-bbox="581 428 951 495">o Suspect puts foot down three or more times. <li data-bbox="581 533 911 569">o Suspect nearly falls. <li data-bbox="480 611 802 642">9. Test Interpretation. <ul style="list-style-type: none"> <li data-bbox="529 680 959 816">a. Based on the original developmental research for the One-Leg Stand test, the criterion for this test is 2. <li data-bbox="529 854 971 1026">b. If the person exhibits at least 2 out of the possible 4 clues, the implication is that the suspect's BAC is above 0.10. <li data-bbox="529 1064 924 1134">c. Using that criterion, this test is 65% accurate. <li data-bbox="529 1171 756 1203">d. Restrictions. <li data-bbox="480 1419 829 1451">10. Test Demonstrations. 	<p data-bbox="1016 285 1414 317">Reveal the last item on slide.</p> <p data-bbox="1016 428 1398 495">NOTE: Record as if all four clues were observed.</p> <p data-bbox="1016 1171 1446 1381">NOTE: The original research indicated that individuals over 65 years of age or 50 pounds or more overweight had difficulty performing this test.</p> <p data-bbox="1016 1419 1430 1486">Choose a student to serve as a demonstration subject.</p> <p data-bbox="1016 1524 1430 1661">Conduct a complete test of the student-subject, carefully articulating the verbal instructions.</p>



5 Minutes

H. Limitations of the Three Tests.

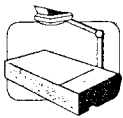
1. Nystagmus limitations.
 - a. A small percentage of people may exhibit nystagmus, due to certain pathological disorders.
 - b. Some suspects may exhibit Horizontal Gaze Nystagmus due to the use of alcohol and certain other drugs.
 - c. A small percentage of individuals may exhibit natural nystagmus.
2. Divided Attention test limitations.
 - a. Both the Walk-and-Turn test and the One-Leg Stand test require a reasonably smooth, level surface.
 - b. Persons with injuries to their legs, or inner ear disorders, may have difficulty with these tests or with other balance tests.

Discuss the student-subject's performance in terms of the test scoring factors. (Slide VIII-30 should be redisplayed during this discussion.)

If time permits, conduct another demonstration using another student-subject.



20 Minutes



Display
Overhead
VIII-27

I. Taking Field Notes on the Standardized Field Sobriety Tests

1. For purposes of the arrest report and courtroom testimony, it is not enough to report the number of clues on the three tests.
 - a. The numbers are important to the police officer in the field, because they help determine whether there is probable cause to arrest.
 - b. But to secure a conviction, more descriptive evidence is needed.
 - c. The officer must be able to describe how the suspect performed on the tests, and what the suspect did.
2. The standard note-taking guide is designed to help develop a clear description of the suspect's performance on the tests.
3. The section on the pre-arrest screening appears at the bottom of the guide's front side.
 - a. Complete the entire procedure for both eyes, writing "yes" or "no" for each clue.
 - o Write "yes" if the clue is present

Instruct the students to take out a copy of the note-taking guide to follow along with this discussion.

This slide will be left on display throughout the discussion.

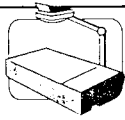
NOTE: For standardization, test the suspect's left eye first.

Then, check for the same clue in the right eye.

Aides

Lesson Plan

Instructor Notes



Display
Overhead
VIII-28

4. The section on the Walk-and-Turn test appears at the top of the guide's back side.
 - a. First two clues are checked only during the instructions stage.
 - o In the boxes provided write number of times the clue appears during the instructions stage.
 - o Example: if suspect loses balance twice during the instructions stage, write "2" in that box.
 - o Example: if the suspect does not start too soon, write "0" in that box.
 - b. Record the next four clues separately for each nine steps.
 - c. If suspect stops walking, record it by drawing a vertical line across the toe at the step at which the stop occurred. Do this for each nine steps.
 - o How many times during first nine steps;
 - o How many times during second nine steps.

This slide will be left on display throughout the discussion of Walk-and-Turn scoring.

Point to the first two clues on slide VIII-28.

NOTE: Checks (✓) may be used to denote number of clues. However, always write totals (numerically) in box.

Remind students that the clue "loses balance during instructions" is recorded only if the suspect's feet "break apart".

Emphasize that students are never to leave a box blank: if the clue doesn't appear, they must indicate that by writing "0".

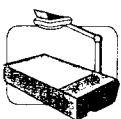
Point to these items on slide VIII-28.

Instruct students to place a letter "S" at bottom of vertical line to indicate "stops walking".

Remind students that, if suspect stops walking even once, that will count as one clue; but in order to prepare a clear, descriptive arrest report, it is best to document how many times suspect paused while walking.

Aides	Lesson Plan	Instructor Notes
	<p>d. If suspect <u>fails to touch heel-to-toe</u>, record how many times this happens.</p> <p>e. If suspect <u>steps off the line</u> while walking, record it by drawing a line from the appropriate footprint at the angle in the direction in which the foot stepped. Do this for each nine steps.</p> <p>f. If suspect <u>uses arms to balance</u>, give some indication of how often or how long this happens.</p> <ul style="list-style-type: none"> o <u>Example</u>: suspect raised arms from sides three times; o <u>Example</u>: suspect held arms away from sides during steps 3 through 7; o <u>Example</u>: suspect "flapped" arms continuously. <p>g. Record the <u>actual number of steps</u> taken by suspect, in each direction.</p> <p>h. For the next clue, "the turn," record a <u>description</u> of the turn.</p> <ul style="list-style-type: none"> o <u>Example</u>: turned incorrectly; o <u>Example</u>: stumbled, to left; 	<p>Instruct students to place the letter "M" at the bottom of vertical line to indicate "misses heel to toe".</p> <p>Place three ✓ (check marks) in the box.</p> <p>Write "steps 3-7" in box.</p> <p>Write in box.</p> <p>Point out that Slide VIII-28 states "actual steps taken". Wrong number of steps is the validated clue.</p>

Aides	Lesson Plan	Instructor Notes
	<ul style="list-style-type: none"> o <u>Example</u>: wrong direction; o <u>Example</u>: no small steps. i. If you terminate the test because the suspect "<u>cannot perform test</u>", indicate why. <ul style="list-style-type: none"> o <u>Example</u>: off line 3 times; o <u>Example</u>: staggered six steps to right, nearly fell; o <u>Example</u>: "leg-locked" after fifth step. j. At end of the test, examine each factor and determine the total number of clues recorded. k. In the section labeled "other", record any facts, circumstances, conditions or observations that may be relevant to this test. <ul style="list-style-type: none"> o Examples of additional evidence of impairment emerging during Walk-and-Turn test: <ul style="list-style-type: none"> - suspect verbally miscounts steps; - suspect utters incriminating statements. 	<p>Point to this item on slide VIII-28.</p> <p>NOTE: Stop test for fear of injury to suspect.</p> <p>Remind students that, even if a clue shows up more than once, each clue is counted <u>only</u> once.</p> <p>Point to this item on slide VIII-28.</p> <p>Give examples of facts, circumstances, etc., that should be noted in this section of the note-taking guide.</p>



Display
Overhead
VIII-29

- o Examples of conditions that may interfere with suspect's performance of the Walk-and-Turn test:

- wind/weather conditions;
- suspect's age;
- suspect's footwear.

5. The section on the One-Leg Stand test appears midway down the page.

- a. Record the suspect's performance separately.
- b. For each clue, record how often it appears.
- c. If suspect sways, indicate how often with a check mark.
- d. Indicate above the feet the number they were counting when they put their foot down.
- e. Check marks should be made to indicate the number of times the suspect swayed, used arms, hopped or put foot down.



Ask students to give additional examples of facts, circumstances, etc., that should be

noted.

NOTE: Suspects with heels 2" or higher should be given the opportunity to remove their footwear.

This slide will be left on display throughout the discussion of one-leg stand clue.

Point out that, by recording when things happen as well as what happens, a more descriptive arrest report can be prepared.

- o Place check marks in or near the small boxes to indicate how many times you observed each of the clues. In addition, if the suspect puts the foot down during the test, record when it happened. To do this, write the count number at which the foot came down.


For example, suppose that, when standing on the left leg, the suspect lowered the right foot at a count of "one thousand and thirteen," and again at "one thousand and twenty;" Your diagram should look like the sketch to the right.

- d. If suspect uses arms to balance, indicate how often arms were raised.
- e. If suspect hops, indicate how many hops were taken.
- f. If suspect puts foot down, indicate how many times the foot came down.
- g. If you terminate the test for "cannot perform test", indicate explicitly why you did so.
- o Example: foot down 3 times;

L	R	
<input type="checkbox"/>	<input type="checkbox"/>	Sways while balancing.
<input type="checkbox"/>	<input type="checkbox"/>	Uses arms to balance.
<input type="checkbox"/>	<input type="checkbox"/>	Hopping.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Puts foot down.

Type of Footwear

Demonstrate the proper documentation for observed clues.

Aides	Lesson Plan	Instructor Notes
	<ul style="list-style-type: none"> o <u>Example</u>: staggered three steps to right, then fell; o <u>Example</u>: continuous hopping, flailing arms, nearly falling. h. At end of the test, examine each clue and determine how many clues have been recorded. i. Write the number in the "total clues" box. j. In the section labeled "other", record any facts, circumstances, conditions or observations that may be relevant to this test. <ul style="list-style-type: none"> o Examples of additional evidence of impairment emerging during one-leg stand test: <ul style="list-style-type: none"> - suspect verbally miscounts 30 seconds; - suspect utters incriminating statements. 	<p>Point to this item on slide VIII-29.</p> <p>Remind students that, even if a clue shows up more than once, each clue is counted <u>only</u> once.</p> <p>Point to this item on slide VIII-29. Remind students that "number" of clues is utilized only for administrative purposes and that for courtroom testimony a complete description of each clue observed is essential.</p> <p>Point to this item on slide VIII-29.</p> <p> Ask students to give additional examples of facts, circumstances, etc., that should be noted.</p> <p>Give examples of facts, circumstances, etc., that should be noted in this section of the note-taking guide (i.e., untied shoelaces, removed footwear, etc.).</p>

Aides	Lesson Plan	Instructor Notes
	<ul style="list-style-type: none"> o Examples of conditions that may interfere with suspect's performance of one-leg stand: <ul style="list-style-type: none"> - wind/weather conditions; - suspect's age; - suspect's footwear. 	<p>NOTE: Suspects with heels 2" or higher should be given the opportunity to remove their footwear.</p> <p>Solicit students' questions concerning field note taking.</p>

